SENATE—*Friday, June 28, 1991*

(Legislative day of Tuesday, June 11, 1991)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable HERB KOHL, a Senator from the State of Wisconsin.

PRAYER

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

Let us pray:

God of our fathers who inhabits eternity and infinity, as recess begins and Senators travel, we thank You for Your promise to Joshua, "* * * Be strong and of good courage; be not afraid, neither be thou dismayed: for the Lord thy God is with thee whithersoever thou goest."—Joshua 1:9. Grant to those who travel journeying mercies and safe return.

Father in Heaven, the Senators have been working long hours under difficult, emotional, sometimes divisive conditions. We pray that this recess will be a time of healing, reconciling, deepening of relationships with families, and that the Senators will find time for rest, recreation, and renewal. Bless their labors which duty demands and return them safely to their work here.

We pray for all who serve so diligently in the Senate who will now enjoy a brief respite from their responsibilities, that this recess will be for them a rewarding time with family and friends. Bless those who remain on the job here in the Capitol.

We pray in His name who never leaves us or forsakes us. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 28, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERB KOHL, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. MITCHELL. Mr. President, we will return to the consideration of the crime bill immediately. It is my hope that Senators who have amendments that they wish to offer will do so.

The distinguished former chairman of the committee is here and present. The present chairman of the committee is here, Senators ready to proceed with respect to this matter.

I hope we can move with dispatch on the several amendments which may be remaining.

Senators should be aware that rollcall votes are likely throughout the day.

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

The ACTING PRESIDENT pro tempore. Will the Senator withhold that request?

Mr. MITCHELL. I withhold.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Without objection, the leadership time is reserved.

VIOLENT CRIME CONTROL ACT

The ACTING PRESIDENT pro tempore. The Senate will now resume consideration of S. 1241, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1241) to control and reduce violent crime.

The Senate resumed consideration of the bill.

Pending:

Specter modified amendment No. 381, to establish post-conviction proceedings to ensure that the death penalty is expeditiously carried out.

Mr. THURMOND. Mr. President, we have been on this crime bill now several days. I think we ought to get through with it today, and early today if we can. If those who have amendments will come in and offer the amendments, then let us get going. There is no use wasting hours and hours as we have done for the last few days.

I wish to commend the leaders in trying to push along, and I am sure we can make time here to finish up this bill and give the country a good crime bill.

I hope that we can get going here very quickly and get a lot done here as soon as possible.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Idaho is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. CRAIG. Mr. President, I ask unanimous consent that the following list of first-degree amendments, which I send to the desk, be considered in order of their sponsors' arrival in the Chamber, and that no other amendments or motions to recommit be in order prior to the disposition of these amendments, except for those which the two managers have cleared for consideration.

Mr. President, both the minority and majority have agreed on this, along with the managers of the legislation.

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

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Wisconsin.

AMENDMENT NO. 433

(Purpose: To address the growing problems of rural crime in a systematic and effective manner with a program of practical and focused research, development, and dissemination)

Mr. KASTEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The Senator from Wisconsin [Mr. KASTEN] proposes an amendment numbered 433.

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

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

The amendment is as follows:

At the end of the bill, add the following new title:

TITLE —RURAL CRIME PREVENTION STRATEGY

SEC. 01. FINDINGS.

The Congress makes the following findings:

(1) The traditional supportive roles in the family, church, school, and community have declined in importance as a positive social factor influencing the prevention and control of crime in rural areas. As a result in recent years rural areas have experienced a marked increase in crime rates. This increase is taking its toll on rural law enforcement practitioners who are already encumbered by numerous characteristics that are unique to their rural circumstances.

(2) Compounding the increase in crime rates, rural police unlike their urban counterparts, are likely to encounter a multitude of nontraditional police tasks such as fire and railroad emergencies, search and rescue missions, animal control problems, livestock theft, wildlife enforcement, illegal distilleries, illegal crop farming and drug manufacturing, rural drug trafficking, and toxic dumping.

(3) These problems are further exacerbated by the rural officer's distinct disadvantage with respect to the lack of adequate training to manage these varied assignments, the low degree of specialization of job tasks, unique job stress factors, and inadequate data resources. Inadequate rural crime statistics and data analysis capabilities further frustrate the rural police organization's ability to cope with the nature, extent, and trends of rural crime.

(4) Rural law enforcement agencies are at a critical juncture, and strategic planning and action are imperative. The Domestic Chemical Action Group as convened by the National Institute of Justice in October 1990 has recommended that rural police receive training in various safety issues related to the identification, investigation, and seizure of illicit drug and chemical laboratories located in rural areas. Without such specialized training officials will face a high probability of explosions endangering police personnel and the community. National Institute of Justice sponsored research of environmental crime in major urban areas, including Los Angeles, has revealed the lack of police training in the identification, investigation, and clean-up of toxic and hazardous waste areas. It can be said with certainty that this recognized need for hazardous materials training is equally critical for rural police organizations.

SEC. 02. STRATEGY TO ADDRESS RURAL CRIME.

The purpose of this title is to address the growing problems of rural crime in a systematic and effective manner with a program of practical and focused research, development, and dissemination designed to assist States and units of local government in rural areas throughout the country in implementing specific programs and strategies which offer a high probability of improving the functioning of their criminal justice systems.

SEC. 03. NATIONAL INSTITUTE OF JUSTICE NATIONAL ASSESSMENT.

(a) IN GENERAL.—The Director of the National Institute of Justice (referred to in this title as the "Director") shall conduct a national assessment of the nature and extent of rural crime in the United States, the needs of law enforcement and criminal justice professionals in rural States and communities, and promising strategies to respond effectively to those challenges, including—

(1) the problem of clandestine drug laboratories; changing patterns in their location and operation; safety and liability issues for both law enforcement officers and the community in the identification, investigation, seizure, and clean-up of clandestine laboratories;

(2) other environmental crimes, such as the dumping of hazardous and toxic wastes; the pollution of streams, rivers, and ground water; and access of rural communities to the expertise necessary to successfully identify, investigate, and prosecute such crimes;

(3) the cultivation of illegal crops, such as marijuana, including changing patterns in location and techniques for identification, investigation, and destruction;

(4) the problems of drug and alcohol abuse in rural communities, including law enforcement and criminal justice response and access to treatment services;

(5) the problems of family violence and child abuse, including law enforcement and criminal justice response and access to services for victims of such crimes;

(6) the problems of juvenile delinquency and vandalism as they affect rural communities;

(7) the access of law enforcement and criminal justice professionals in rural communities to the services of crime laboratories, the Automated Fingerprint Identification System, and other technological support;

(8) the access of law enforcement and criminal justice professionals in rural communities to professional training and development and the identification of models for the delivery of such training; and

(9) the special problems of drug abuse in jurisdictions with populations of 50,000 or less.

(b) FINAL REPORT.—The Director shall submit the national assessment to the President and Congress not later than 12 months after the date of enactment of this title.

(c) DISSEMINATION OF REPORT.—Based on the results of the national assessment and analysis of successful and promising strategies in these areas, the Director shall disseminate the results not only through reports, publications, and clearinghouse services, but also through programs of training and technical assistance, designed to address the realities and challenges of rural law enforcement.

SEC. 04. PILOT PROGRAMS.

(a) IN GENERAL.—The Director is authorized to make grants to local law enforcement agencies for pilot programs and field tests of particularly promising strategies and models, which could then serve as the basis for demonstration and education programs under the Bureau of Justice Assistance Discretionary Grant Program.

(b) TYPES OF PROGRAMS.—Pilot programs funded under this section may include—

(1) programs to develop and demonstrate new or improved approaches or techniques for rural criminal justice systems;

(2) programs of training and technical assistance to meet the needs of rural law enforcement and criminal justice professionals including safety;

(3) a rural initiative to study and improve the response to traffic safety problems and drug interdiction;

(4) an ongoing program to assist law enforcement professionals in dealing with the hazards of clandestine drug laboratories;

(5) victim assistance information to assist departments in beginning and maintaining strong programs to assist victims and witnesses of crime;

(6) emergency preparedness information for community groups concerned about disaster preparedness on the family and community level; and

(7) program targeted at communities of less than 50,000 stressing the need for production of public safety through extensive partnership efforts between law enforcement, other local government agencies, businesses, schools, community and social organizations, and citizens.

SEC. 05. FUNDING.

There are authorized to be appropriated $5,000,000 to carry out the national assessment and pilot programs required by this title.

Mr. KASTEN. Mr. President, I believe that one of the greatest problems facing law enforcement to date is the rising problem of crime, not in our urban areas, but in the rural areas of our Nation. That is why I have offered this amendment, in order that we might direct our resources in a manner that addresses the problem of rural crime head on.

My amendment would direct the National Institute of Justice to conduct a 1-year study on the nature and extent of crimes committed in rural America, and second, on the needs of law enforcement and criminal justice professionals in rural States and in rural communities.

Once the study has been completed, the development of a hard-hitting strategy to combat the problems associated with rural crime will be developed and summarily implemented.

Senator BIDEN's comprehensive rural crime program has great merit, but I think it is imperative to take the time to assess and study the problems facing the rural areas of our country, in order to more effectively target our resources, target them now, and also target them in the years to come.

I want to commend the Senator from Delaware and the Judiciary Committee for the recent release of their report on rural crime. However, in dealing with a problem of this magnitude, I think the best approach is to, first, identify the problem and, secondly, to develop a strategy to deal with the problem, and then to implement a plan of action to address the problem of rural crime.

Mr. President, the amendment also calls upon the Director of the National Institute of Justice to implement pilot programs of proven effectiveness. Such programs should include the development and demonstration of new or improved approaches or techniques for rural criminal justice systems; the implementation of training, safety, and technical programs of assistance; rural initiatives to study and improve re-

sponse to traffic safety problems and drug interdiction; an ongoing program to help rural law enforcement to deal effectively with the problems caused by clandestine drug labs and their impact on the environment and also the community; an increased cooperation between Federal, State, and local law enforcement informational networks; and the development of victims assistance, emergency preparedness, drug and alcohol abuse, and domestic violence programs.

Mr. President, assessing the nature of the rural crime problem in our Nation and subsequently developing a strategy to deal with this crisis would be the logical first step to eradicate the crime that has plagued rural America for many years.

Mr. President, I understand that this amendment has been cleared by both the majority and minority side. I urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 433) was agreed to.

Mr. KASTEN. I move to reconsider the vote and move to table that motion.

The motion to lay on the table was agreed to.

AMENDMENT NO. 434

(Purpose: To amend title 18, United States Code, to create a Federal offense for violent felonies against the elderly)

Mr. KASTEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. KASTEN] proposes an amendment numbered 434.

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

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

The amendment is as follows:

At the end of the bill, add the following new title:

TITLE —VIOLENT FELONIES AGAINST THE ELDERLY

SEC. 01. VIOLENT FELONIES AGAINST THE ELDERLY.

(a) IN GENERAL.—Chapter 227 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 3581. Mandatory sentence for felony against individual of age sixty-five or over

"(a) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of a defendant of a crime of violence under this title, if any victim of such crime is an individual who had attained age sixty-five on or before the date that the offense was committed, the court shall sentence the defendant to imprisonment—

"(1) for a term of not less than one-half of the maximum term of imprisonment provided for such crime under this title, in the case of a first offense to which this section is applicable; and

"(2) for a term of not less than three-fourths of the maximum term of imprisonment provided for such crime under this title, in the case of a Second or subsequent offense to which this section is applicable.

"(b) Notwithstanding any other provision of law, with respect to a sentence imposed under subsection (a) of this section—

"(1) the court shall not suspend such sentence;

"(2) the court shall not give the defendant a probationary sentence;

"(3) no defendant shall be eligible for release on parole before the end of such sentence;

"(4) such sentence shall be served consecutively to any other sentence imposed under this title; and

"(5) the court shall reject any plea agreement which would result in the imposition of a term of imprisonment less than that which would have been imposed under subsection (a) of this section in connection with any charged offense.

"(c) As used in this section, the term—

"(1) 'crime of violence' means—

"(A) a felony that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; or

"(B) a felony that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense; and

"(2) 'victim' means an individual against whom an offense has been or is being committed.".

(b) AMENDMENT TO TABLE OF SECTIONS.—The table of sections for chapter 227 of title 18, United States Code, is amended by adding at the end the following new item:

"3581. Mandatory sentence for felony against individual of age sixty-five or over.".

(c) OTHER TECHNICAL AMENDMENTS.—(1) Section 3731 of title 18, United States Code, is amended by inserting after the second paragraph the following new paragraph:

"An appeal by the United States shall lie to a court of appeals from an otherwise final decision, judgment, or order of a district court sentencing a defendant on the ground that such sentence is less severe than that required under section 3581 of this title.".

(2) Rule 32(c) of the Federal Rules of Criminal Procedure is amended—

(A) by adding at the end of the first paragraph in paragraph (1) the following new sentence: "Neither the defendant nor the court may waive a presentence investigation and report unless there is in the record information sufficient for the court to determine whether a mandatory sentence must be imposed pursuant to title 18, United States Court, section 3581."; and

(B) in paragraph (2)(D), by inserting after "the offense" the following: "and information relating to whether any victim of the offense had attained age 65 on the date that the offense was committed.".

(3) Rule 11(e)(1) of the Federal Rules of Criminal Procedure is amended by striking out "The" after "IN GENERAL." and inserting in lieu thereof "Except as provided in title 18, United States Code, section 3581, the".

Mr. KASTEN. Mr. President, there is an alarming increase in violent crimes committed against the elderly in our Nation. In the past decade, seniors have fallen prey to an unbelievable number of auto thefts, personal and household larcenies, murders and burglaries.

Something must be done to put an end to this travesty.

My amendment would not allow the courts to suspend the sentence of an individual found guilty of committing a felony against someone age 65 or older.

An individual convicted of a first offense will receive a term of not less than one-half the maximum term of imprisonment for the particular offense. If that individual is found guilty of a second offense he will receive a term of not less than three-fourths the maximum term of imprisonment for the offense.

Further, the court would not be allowed to accept a plea which would reduce time served; allow parole before completion of serving the imposed sentence; give the defendant a probationary sentence; and, prohibit the sentence to be served consecutively to any other sentence the convicted may be serving.

As unfortunate as it may sound, our law enforcement officials have been telling senior citizens to trust no one, advice that doesn't have to be repeated in today's climate. There used to be a time in this country of ours, not so long ago, that a person could drive or walk to the store for groceries without fearing for such things as whether or not the door had been locked, or whether the car was locked, or whether their valuables had been stored in a safe place before they had left. Most importantly, our elderly should not fear for their lives on the way to and from the store.

Mr. President, I for one would like to be able to bring those days of old back. I would like to think that the lives of my parents, your parents and the parents, grandparents and great-grandparents of every American can be made safer with the adoption of this legislation. Let us give our seniors the respect and admiration they deserve instead of the humiliation and disrespect they have been receiving. A vote for my amendment is a vote to protect our Nation's elderly.

Mr. President, I understand that this amendment has been cleared on both sides, and I therefore urge its immediate adoption.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 434) was agreed to.

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

The motion to lay on the table was agreed to.

Mr. KASTEN. Mr. President, I ask unanimous consent that Senator HATFIELD be added as a cosponsor to the rural crime amendment, No. 434.

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

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

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Idaho.

Mr. SYMMS. Mr. President, I seek the floor just to speak on a bill, the pending gun control bill that we have before us. I think we need to recognize what we have here, and we do, Mr. President, have before the Senate a bill that will severely restrict the rights of people to buy and own legal firearms in the United States.

People say well, you are carrying that a little far are you not, Senator? Mr. President, I would say, what would happen if looking at the first amendment, we went down to the newspapers and said well, when you write editorials in the paper you first have to let them be cleared for a 7-day period and let the local authorities decide whether or not it is OK for this editorial to be carried. It has to be approved by the local law enforcement people for 7 days before it can be printed. I think you would get quite a different response to this.

But what has happened is—and I would have to say that I compliment the leadership—that last night they did take out some very obnoxious parts of this bill. Gun registration, the waiver of someone's right to protection under normal protections under the law, and other factors that were very obnoxious to Senator STEVENS, who made the point on the floor last night.

But, we still have before us a bill that bans 14 semiautomatic weapons, and requires a 7-day waiting period for the legal purchase of a firearm in this country. It is the camel's nose under the tent, is what it is. It is gun control no matter how you look at it.

The President, over 100 days ago, asked Congress to send him a crime bill. As I said, Mr. President, now we have a partial crime bill because of amendments that were put in on the floor that improve it so that it has some more respect for criminal control than it had when it came from the committee. But it still is a gun control bill.

I might just review what happened. When this bill came to the committee, and I mean from the committee to the floor, this bill would have effectively outlawed the death penalty by requiring that it be imposed in accordance with strict racial quotas. I found it interesting that when Senator HELMS had an amendment pending before the Senate that dealt with racial quotas, that somehow that was not in order; yet, when the bill came from the committee it was laced with racial quotas with respect to the death penalty.

The pending bill that came from the committee also would have expanded the rights of the convicted criminals by overturning six Supreme Court decisions limiting the rights of habeas corpus. The bill would have limited the rights of ordinary citizens to protect themselves against crime through the use of handguns. The bill would, with one hand, throw billions of dollars at problems created by the very leniency toward criminals which this bill enhances.

In sum Mr. President, the bill loses sight of some of the most fundamental prerequisites for anticrime legislation. We should be striving to punish the criminals not to divert the public attention that somehow having a 7-day waiting period is going to make one whit of difference with respect to the crime control in this country. It will make no difference to have a 7-day waiting period. Eighty percent-plus of all the firearms used in the commission of felonies in this country are illegally purchased or they are not purchased through anyplace where they have a 7-day waiting period even if it is the law.

The record shows, Mr. President, as I said last night and I will say again through this Senator, that in the States that have had a waiting period it has not worked, the violent crime has gone up. The States that are really trying to punish criminals, their violent crime has gone down.

So I think we are losing sight here and diverting the public attention and doing a real disservice to the American people when those of us in the U.S. Senate succumb to doing something just because it may appear to be, on the surface, popular, but it will have no impact at all with respect to crime control and making streets safer places for people to be. Some Members of the Senate may have succeeded in fooling themselves, but the American people have not been fooled. Maybe we are fooling ourselves, Mr. President, maybe that is what it is. Maybe the Senate is fooling itself into thinking we are doing something.

Eventually the American people are going to recognize it. They are going to look at the RECORD and they are going to find out who voted for gun control in the U.S. Senate and who voted for freedom and personal responsibility, and who voted for crime control.

People in Jacksonville, FL, where the murder rate has risen to 84 percent in the last 5 years, were interested in curtailing the right of criminals to file frivolous petitions.

The citizens of New Orleans, where the murder rate has risen to 101 percent from 1985 to 1990, want to reduce the options open to criminals to ban evidence obtained in good faith in their criminal trials and not to extend them.

The people of Milwaukee, where the murder rate has risen to 126 percent from 1985 to 1990, has risen another 43 percent already in 1991, want to implement the death penalty, not have done away with as the bill came from the committee with racial quotas.

Mr. President, the distinguished chairman of the committee the very able Senator from Delaware makes a statement here on the floor that he fails to see how the abuses of habeas corpus have had any relationship to my ability to go to the store without fear of becoming a victim of a crime.

Mr. President, I would say in response to anyone who alleges that an expansion of criminal rights has no impact on public safety, I wish to relate the legal convolutions involved in connection with one vicious crime, and I think herein lies our problem in the country and this is what the American people are talking about.

The point is, the American people that I talk to across the country are concerned with issues, just like the story I am about to relate.

The crime occurred on the night of March 21, 1962, in a small town in California when a convicted rapist, Booker Hillery rammed a pair of sewing scissors into the throat of 15-year-old Marlene Miller. Marlene was using the scissors to make a birthday dress for her 16th birthday when Booker Hillery took the scissors and rammed them up her throat and rammed them into her spinal column and her brain.

After he had attempted to rape the young girl he jabbed the scissors, which were monogrammed with her name, into her throat up to the handles, and dumped her body in an irrigation ditch.

How had Hillery gotten around to do this? No. 1, he was out on parole from an earlier rape conviction. He was tried for this case of ramming the scissors up Marlene Miller's throat and sentenced to death.

This was 1962, Mr. President. But his sentence to death was not the end of this sorry tragic episode. In fact, it was just the beginning of a 29-year ordeal for Marline's family and friends, an ordeal which is still a long way from reaching a conclusion.

Hillery appealed, arguing that the jury that sentenced him to death, had been erroneously told that if he received a life sentence he could be released on parole. Although this was absolutely true at the time of the trial, a subsequent case created a new rule. So the California Supreme Court, after initially upholding the conviction, in 1965 ordered a new trial with respect to the sentencing phase.

Hillery was tried a second time in the sentencing phase. Again, he was sentenced to death. This time he filed a habeas corpus petition claiming that a potential juror had been improperly excused because she felt she could not sentence anyone to death. Again, the sentence was thrown out.

So a third time Hillery was tried in the sentencing phase. A third time he was sentenced to death. A third time he appealed his death sentence. This time he argued the death penalty was unconstitutional under the California Constitution, and his sentence was reduced to life imprisonment.

Having overturned the death penalty, however was only the beginning for Hillery. Now this fellow, who is a child molester, a rapist, and a murderer began his long campaign to be released to the streets. Later that year, Hillery filed still another habeas corpus demanding his release on the ground that blacks had been excluded from the grand jury which indicted him.

This was particularly a pathetic line of argument because there was no evidence of any discrimination in connection with the judicial proceedings. Although the county in question had a black population of less than four-tenths of 1 percent, the judge responsible for the grand jury selection had solicited the identity of a potential black juror from Hillery's lawyer. When a black jury candidate was located, he was excluded at his own request because jury service would have conflicted with his employment. It had nothing to do with discrimination. Absolutely nothing to do with it. It just did not work.

In spite of this fact, after 5 additional years of litigation, and thousands and thousands of dollars, a U.S. district court granted Hillery's habeas corpus petition and ordered him released and retried. That unfortunate decision was affirmed by both the U.S. Court of Appeals and the U.S. Supreme Court.

Rather than turning Hillery loose on the street to murder and rape more young girls, Hillery was retried. On December 18, 1986—now remember, Mr. President, it was in March 1962 when he rammed the monogrammed scissors into the throat of young Marlene Miller; now it is December 18, 1986—he was again convicted of murdering Marlene Miller, a murder which occurred 24 years earlier. This time, he was sentenced to life in prison.

Mr. President, if this was the end of the episode and they had put him in jail and had thrown the key away and we did not have to worry about it, that would be one thing. But the sorry episode still is not closed. Within hours of his 1986 conviction, he filed notice of appeal, and that appeal is still pending.

Twenty-nine years after Booker Hillery rammed a pair of scissors through Marlene Miller's throat, the case is still not closed—and, furthermore, it is not even close to being resolved.

It is only another pathetic illustration of a number of fundamental truths. And the reason I bring this out is the obvious lesson of this is very simple. The central reason for the country's escalating crime rate is the hardcore cadre of career criminals who are repeatedly released on the streets to victimize innocent people again, and again, and again. That is why Senator THURMOND has been fighting this case so hard for the rules of evidence, for the habeas corpus rules, and that is why it is such a fraud on the American people to put these gun control measures in this bill and deprive freedom and liberty from law-abiding citizens and do nothing, do absolutely nothing, about the problem of Booker Hillery.

Mr. President, in 1990, the Department of Justice published an elaborate profile of felony defendants in large urban counties. This study pointed out that two-thirds of the felony defendants had an arrest record; almost four-fifths of that group has a felony arrest record. Furthermore, one quarter of all felony defendants had four or more felony arrests.

So what we are saying is, and what the report shows the facts are, it is the same people who are doing these crimes over and over again. What this country needs Mr. President, is criminal control, not gun control.

Now there is more to the report. The average number of prior arrests for all the defendants was three felony arrest charges and three misdemeanor arrest charges. If you look at only defendants who had arrest records, the average number of prior arrests was four felonies arrests and five misdemeanor arrests.

Furthermore, Mr. President, roughly one-third of the defendants were already wards of the criminal justice system. They are already wards of the system. Forty-one percent were on probation and 34 percent were on pretrial release for a previous case that was still pending.

Finally, 59 percent of the defendants charged with violent offenses were released prior to disposition of their case. Forty-six percent of all released defendants were released on the day of their arrest or the following day. Only one-third of all defendants arrested on felony assault charges were ultimately convicted of felonies.

Mr. President, I happen to be one of the nonattorneys in the Senate but I say to my colleagues and to the Chair that it does not take a brain surgeon, when you look at these facts and figures, to figure out what is wrong. Most crimes are committed by career felons who should be in prison or should have been executed for past murders or other crimes of violence.

Even when arrested, these felons get released pending trial and go out and commit more crimes. Even after numerous felony convictions, a lenient criminal justice system has allowed these criminals to plea bargain their way out onto the street without serving time.

Mr. President, we need to harken back to the days when we were young and used to read Dick Tracy in the comics, when Tracy always said we have to make it so that crime does not pay. It is very simple, very easy to understand, but it is true. It may not be easy to become a reality to have a fair justice system. And I am the first to say that we have to be cautious to be sure that it is a fair justice system and they all get their day in court.

But I think that, at some point in time, rather than making it easier for States to prosecute felons, which is what we should be doing—make it easy to take those career criminals, those people that commit 80 percent of those crimes, the repeat offenders that have been in four, five times, committing armed robbery, burglary, rape, assault and battery, drug-related incidents, all of these kinds of crimes—rather than making it easier for them, the Federal Government has, unfortunately, thrown impediments in the path of the States and made it harder for them. They have made it difficult for effective law enforcement.

Currently, the penal systems of roughly 35 States are under control of the courts. Petitions by prisoners for release—called habeas corpus petitions—clog the courts with frivolous issues, ranging from double-bunking of prisoners to the adequacy of prison law libraries.

Mr. President, I would say that probably as we are here in the Senate this morning there may be Senators that have children or their staffs, or others that follow the Senate, and that if the sleeping arrangements of some of the children in summer camps came before the Federal courts on a habeas corpus petition they would probably be declared unconstitutional because they probably have too many children bunking in a room or something.

The Federal Government has played a significant role in getting us into this mess. That is why Senator THURMOND and others are trying to lead an effort to have the Federal Government get us out of the mess that it has helped get us into.

Last week, with the defeat of the President's crime bill, I think the Senate rejected the legislation that really was a big step in that direction.

First, it would establish a constitutionally viable death penalty at the Federal level for roughly 40 crimes.

I still think the Senate ought to reconsider what it has done and ought to consider going back and taking a look at the President's bill again. I think the American people should look at what the President's bill is. That is why this Senator is in absolutely no hurry for us to try to pass this bill before the break.

I think we need the time over the Fourth of July for our constituents, for the American people, to look at this bill and look at what the President sent us and compare these two measures and see which one will do the best job to help get the criminals off the streets and protect the citizens of this country, the law-abiding citizens, to have safe streets and good places to do business.

As I said, first, the President's bill would establish a constitutionally via-

ble death penalty at the Federal level for roughly 40 crimes.

Second, the President's bill would limit habeas corpus petitions such as those used by Booker Hillery to keep his appeals alive for 29 years.

Third, the President's bill would create a good faith exception to the exclusionary rule, thereby ensuring that dangerous criminals are not released to seek further victims merely because of a technical violation or arcane rules of evidence.

I think that is a very important point. I have heard the distinguished senior Senator from South Carolina speak of this many times and I, as one Senator, am very disappointed that the President's bill is not the vehicle from which we are working here on the Senate floor. We simply do not have the votes and the American people need to know we do not have the votes. The American people need to know that the bill that came from the Judiciary Committee is an antigun, anti-crime-control bill. That is the way that it was when it came from the committee. It has been improved some but it is still a pro-gun-control bill; it takes guns away from law-abiding people, it diverts attention of law enforcement people so they are going to be spending their time shuffling paper instead of being out on the street, fighting crime.

After this endorsement of the President's bill, I might say I do not agree with every single provision in the President's anticrime bill; not with those provisions, those that I mentioned, which do go after legitimate gun owners.

But the bill Senator THURMOND offered took those out. He had a much better bill.

I do agree, however, with President Bush, that the key to taming crime in our cities is to take career criminals off the streets—control the criminals. By contrast, the approach of many of our congressional friends here is to punish the legitimate gun owners with inconveniences, expenses added to local law enforcement people with respect to the waiting period, tie up good police officers doing bureaucratic paperwork, get them off the streets while leaving the criminals unscathed.

Roughly 80 percent of all illegally used firearms are acquired illegally. These bills would do little to curb crime and violence on the Nation's streets. This reality is illustrated clearly by the fact that virtually every jurisdiction in America which has enacted or extended its waiting period for firearm purchases, including the States of Connecticut, California, and Washington, have witnessed an increase in violent crime substantially exceeding the national average.

For example, Indiana, California, Minnesota, New York, Connecticut—all have waiting periods. For the period between 1967 and 1989, these waiting period States all witnessed homicide increases exceeding the national average.

In Indiana, Mr. President, where they had a waiting period, the homicide rates went up 70 percent. In California, they have it; it went up 82 percent. In Minnesota, it was up 56 percent. In Connecticut, the increase was 146 percent. And in New York, a State famous for its rigid gun control laws, the homicide rate increase was 131 percent.

Compare that with some States that do not have a waiting period: in Alaska, the homicide rates were down 16 percent; in Nevada, the rates declined 24 percent. Prior to its adoption of a waiting period, Delaware homicide rates were dropped by 35 percent. Vermont homicide rates plummeted 39 percent. In my own State of Idaho, the homicide rates were down 40 percent.

Violent crime statistics tell the same story. States with waiting periods have experienced vast increases in violent crime compared with States without waiting periods.

So what is it that everybody is talking about in the national news today, about what is in this bill? That the Congress defeated the NRA last night on the Senate floor and they are going to impose a waiting period on the American people; as if, somehow, that placebo is going to have any impact on violent crime in the streets of America. The only thing that will stop violent crime on the streets of America is to lock up career criminals and do not return the key so they do not get back out to repeat the offenses against a new set of victims. That is the only way we are going to stop the problem.

Violent crime statistics tell the same story, over and over again. States with waiting periods have had increases, while States without them have had decreases. In New Jersey, the violent crime rate went up 223 percent from 1967 to 1989. In Massachusetts, it was up 429 percent. In Connecticut—the State of the distinguished Presiding Officer—the rate of violent crime soared an astronomical 434 percent.

At the same time, in Virginia, where they did not have a waiting period, the violent crime rate was up only 63 percent; in West Virginia, 51 percent; in Montana it crept up 38 percent.

I am not happy about any State where it goes up. But the fact it is the average rate of increase in Virginia, West Virginia, and Montana, three nonwaiting period States, was 51 percent, while the average increase in New Jersey, Massachusetts and Connecticut, the three waiting period States, was 362 percent. In other words, the rate of increase in violent crime in the waiting period States was over seven times that of the States without waiting periods.

FBI statistics point out that a majority of crime occurs in jurisdictions with waiting periods or gun permit systems in place. In fact, these gun control jurisdictions account for two-thirds of the U.S. homicides and three-quarters of the U.S. violent crime.

What am I saying, Mr. President? Why am I giving these statistics? Because it appears to this Senator, in those areas people have looked at the wrong problem. They have looked at guns and said guns are the problem, instead of looking at criminals and saying criminals are the problem and we are going to get the criminals off the street.

So the question is, Will having the so-called Brady Bill, or the 7-day waiting period that is in this bill which makes it a gun control bill, will it cut down on crimes of passion? According to the statistics, the answer is "no."

According to the FBI summary of homicide reports, the average rate of domestic homicides in cities with waiting periods is 2½ times the average rate of domestic homicide in cities without waiting periods. I wonder why that is.

Well, the fact is, people who are going to commit homicides, commit felonies and do illegal acts, do not buy the guns in the legal outlets anyway.

So the question is, do we think the American people want an increase in the homicide rate? No.

Do they want an increase in violent crime rates? No.

Do they want an increase in domestic violence? No.

In domestic homicide? I do not think so. The American people obviously do not want that. They want a decrease in the incidence of homicide. They want to slow down the growth of violent crime and domestic crime.

A comprehensive study exhaustively researched and written by the ACLU attorney David B. Kopel shows why waiting periods are more dangerous to the public than they are helpful. Waiting periods distract law enforcement officials from being on the street and fighting crime and getting criminals off the street. And they fail to keep the guns out of the hands of the felons.

Mr. President, I ask unanimous consent that Mr. Kopel's study be printed in the RECORD in full at the end of my remarks.

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

(See exhibit 1.)

Mr. SYMMS. Ironically, the Washington interest groups that push these dubious gun control solutions are comprised of the same people who, 10 or 15 or 20 years ago, were blaming society for the incidence of crime in this country. At the same time they are blaming society for the incidence of crime in the country, they are passing laws that interfere with progress and the growth of jobs and opportunities in the country by raising taxes, and watching a decline of the private ownership in the inner cities. I think the American people are far ahead of the Congress on

this issue. I think we are going to get a real shock—some people are—this year.

Actually, I guess I speak like all Members of Congress. We all think in terms of every 2 years as 1 year. I see my distinguished friend from Illinois who is in my class. When we say this year, we really mean next year because that is the election year.

I think in November 1992, there is going to be a real shock on the part of a lot of Members of Congress who have voted for gun control because the American people understand what the Founding Fathers were talking about. They understand that they wanted the law-abiding citizens to be able to own and purchase firearms, to be able to protect themselves from any kind of problem that might arise where they needed protection. They realized that it is the criminals in our society, not the honest, hard-working, law-abiding gunowners of America, who are responsible for crime.

Furthermore, the American people realize that the only way to reduce crime on the streets is to take the criminals off the streets. So unless Congress begins to take a leadership role in this area and begins to punish criminals rather than the American people, I am convinced that come the fall of 1992, the American people are going to speak to that issue and they are going to speak to it loudly and clearly.

I urge my colleagues to still look at ways to strip these gun control measures from this legislation that do absolutely nothing in terms of fighting crime and will make no contribution to making the streets safer in America, and then address some of the problems that will.

I want to summarize by saying, Mr. President, that we should make it tougher on the criminals and get the criminals off the streets and leave the law-abiding citizens alone; in fact, encourage them to own their own firearms, handled properly, and safely, so they can protect their own families.

Mr. President, there is one other area I wish to speak to. All you have to do is go to the inner cities of America where the breakdown in law and order is the worst and that is where you will find socialism the most rampant. What has happened in this country is when you go into the inner city, there is no privately owned property any more. If this Congress could have the courage to freeze the Federal budget and stop hiring thousands and thousands of bureaucrats, reduce the taxes on capital gains and on property, take public housing and homestead, give it to the people, if necessary, set up housing units where people own their houses so they can have pride and a sense of ownership, we will find we can do much more for getting rid of crime than all of this other nonsense of spending billions and billions of dollars, sending people off to foreign countries to try to interdict the supply of drugs. We need to address the problem at home, give recognition to the virtues, values, and humanitarianism of capitalism, freedom, and the private owner aspects of our country so the young people growing up, whether they are black, Hispanic, whatever, in the inner cities have the opportunity to know what it means to live in a home that their parents own or their mother owns. We do not do that.

What we do is encourage a welfare state mentality with no respect for private property in the inner cities. About the only business that is left is selling drugs. That is the only form of capitalism left in some of these inner cities. It is tragic. It is a statement of tragedy, in my view, on the American Congress.

What does the American Congress want to do? The liberal leadership of the Congress wants to put a ban on peoples' ability to buy a gun, and somehow it will solve the problem. It will do nothing, Mr. President, to solve the problem.

What this country needs to do is to get the criminals off the streets and restore opportunities for people. We should be freezing the budget. We should be reducing taxes on capital assets and we should be privatizing the inner city so the people can own something in the inner city.

There is no question in my mind that it would go a long way toward reducing the crime problem and reduce the demand for drugs in this country and is a way to fight the problem with respect to what we are doing overseas and all the money we spend on interdiction. We spend billions and billions of dollars.

We had a bill that passed the Congress last year; $9 billion was added for the drug problem. Two Senators voted against it; 98 to 2. The two Senators who voted—I read the press claims—they both had the same response and later in consultation they said they had not talked to each other. They said it is a waste of money unless we address the real problem: Private ownership, respect for private property, restore the opportunity for young people to get a job.

Secretary Kemp talks about this all the time. I only wish we could have more momentum for what he has tried to do at HUD so that we can actually see we can privatize some of these areas in the inner city. That is the way to fight crime, so that people have a sense of ownership. You bet, if they owned their house, they may want to own a gun to protect their house from the hoodlums on the street if we are not going to give the support to the law enforcement people to take the hoodlums off the street and lock them up. That is what needs to be done, Mr. President.

To pass a gun control bill and somehow think it is going to do any good for anyone I think would be a tragic mistake. That is why this Senator would like very much to see the Congress and the leadership go on recess. I think the best thing we can do today would be to set this bill aside and go on recess, go home, talk to our constituents, find out what they think about this question, go out and have some town meetings and ask them what they think about it and then we can come back and address this problem after the recess.

I think it would be a mistake for us to stay here and try to pass this gun control bill now, which will do nothing to solve the problems of crime in this country, even though the bill has been substantially improved since it left the Judiciary Committee. I commend those Senators who have had a part in that to improve the bill. It still has a long way to go in my view.

Mr. President, I see my good friend from Illinois is on his feet. I understand he is prepared to offer an amendment. I will at this point yield the floor.

EXHIBIT 1

[From Independence Institute, Mar. 25, 1991]

WHY GUN WAITING PERIODS THREATEN PUBLIC SAFETY

(By David B. Kopel)

EXECUTIVE SUMMARY

"Honey, I forgot to duck." Remember the day Ronald Reagan was shot? The President, grinning up from his hospital bed on March 30, 1981, was able to joke about a gunman's attempt on his life. But his press secretary, James Brady, fared much worse; shots from the same pistol left him permanently disabled. The nation was shocked, the gun control movement galvanized.

This month's observance of ten years since the day Reagan and Brady were shot by John Hinckley is an occasion for renewed consideration of what can realistically be done to keep firearms from falling into the wrong hands and being used for the wrong purposes.

The leading proposal before Congress and state legislatures is to require that any retail purchase of a handgun be preceded by a waiting period, during which a background check on the purchaser's criminal and mental record could be conducted.

A waiting period has strong initial appeal. The tradeoffs appear positive: relatively small costs in exchange for significant gains in public safety.

But an exhaustive study of the issue by attorney and gun control expert David Kopel concludes that this preception is misleading. When all the evidence is dispassionately weighed, all the consequences traced, Kopel finds that there is a very real possibility that gun waiting periods threaten public safety.

The reason: law enforcement resources diverted and law-abiding citizens disarmed. Proponents are doubtless right in saying that a federally imposed waiting period would save at least one life somewhere, the author concedes. But he says that is beside the point if America as a whole would be marginally less secure against crime, violence, and fear as a result of the new restriction. Kopel's research and analysis show why

the waiting period's vast cost is likely to more than cancel its apparent benefits.

Advocates of the waiting period use the Hinckley case as a symbol, opinion polls to suggest momentum, criminological studies and state experience for empirical validation. None of the four stands up to scrutiny, however. The proposed law would not in fact have halted purchase of the gun used to shoot Reagan and Brady. Polling results turn out to be flawed and mixed. No criminlogist has shown that waiting periods work. California and other states with waiting periods show only a minuscle arrest rate and widespread unfairness to the law-abiding.

There is shock value in the scenario of guns "too easily bought" by drug dealers, psychotic killers, persons bent on killing a spouse or themselves, or purchasers intending to use them in hot blood. Yet hard data and common sense show little benefit from a waiting period even in such lurid situations.

Against the meager-to-nil impact of waiting periods on crime control must be set their clearly negative impact on the average American's ability to count on police protection or protect himself.

Specifically: Is it desirable to have law enforcement agencies bogged in a vast new paperwork morass and harried with lawsuits over insufficient background checks? To have a threatened person face dangerous, sometimes indefinite, delays in obtaining a self-defense gun? To set in place a mechanism for *de facto* universal gun registration and a political stepping stone to outright gun prohibition? To legislate in disregard of the "no prior restraints" and "least restrictive means" principles that should safeguard not only the Second Amendment, but the whole Bill of Rights? All these are foreseeable effects of the proposal.

Alternatives to the waiting period proposal might include a Virginia-style instant phone check on the purchaser's background, creation of a firearms owner ID card, or adding one's fingerprint to a computerized driver's license (the so-called "smart card"). These measures are preferable in many respects, since they are at least as effective as waiting periods at disarming criminals, and are less likely to be used to disarm citizens. Yet these alternatives, like the waiting period, are subject to evasion by criminals and abuse by government administrators, and create serious risks of privacy violations.

Ultimately, the Kopel study concludes, practicality and constitutionality are best served by strategies that aim to cut gun crime not by targeting the legitimate retail firearms trade, but instead by aiming at the black market where most criminals get most of their guns.

INTRODUCTION

Waiting periods: Many states already have them; most national police organizations, most people, and most gun owners are for them. In the 1970s, even the National Rifle Association supported the idea of a carefully-crafted state waiting period. So who could be opposed?

This paper suggests that sometimes a majority of NRA members, a majority of gun owners, and even a majority of all the people may not always be right.

Waiting periods come in two basic shapes. The "limited" waiting period is a relatively short wait for retail handgun purchases. Proposals for such a law have attracted many co-sponsors in Congress, and lost by margins that (while not narrow) are far from the landslides usually thought to be the National Rifle Association's norm in crushing gun control. The wide support for a limited handgun waiting period in Congress reflects the growing persuasiveness of Handgun Control, Inc., the anti-gun lobby.

The more comprehensive waiting period applies to all guns, including long guns, and applies to all transfers, including gifts between family members. The wait itself is much longer. The comprehensive wait is also supported by Handgun Control, Inc. (HCI). HCI has persuaded legislatures in California, Connecticut, and Rhode Island to adopt a comprehensive wait, supplanting the existing limited handgun wait in those states.

Although HCI backs the new comprehensive waits in California and other states, the ultimate goal is an even stronger comprehensive wait. In 1990, Colorado State Senator Pat Pascoe introduced a waiting period bill which HCI Chair Sarah Brady called "everything on my wish list."[1] The bill provided:

As in California, a comprehensive background check and waiting period on both handguns and long guns, for all transactions, including intra-family gifts.

Each gun purchase would require a background check of up to two weeks, followed by a waiting period of one week. An applicant would then be given a permit to purchase, good for 60 days.

The applicant would pay a fee of up to $20 for each purchase permit.

There would be no exception for a person who needed a firearm for self-defense. In fact, even if the police strongly wanted the citizen to acquire a gun because of imminent deadly threats, a one week delay would still be mandatory.[2]

Presently the only state with a law that is more severe than Colorado's very strict proposal is New Jersey.

The waiting period concept (both limited and comprehensive) reflects the belief that there should be a police check before a person buys a gun. In the form of an instant telephone check, the National Rifle Association is essentially willing to accept the police assent principle, providing the system is structured properly. The instant check is currently in effect in Virginia, with few apparent problems (and some successes) so far. Handgun Control, Inc. accepted the instant check in Virginia, and opposed it in Ohio.

Since the instant telephone check is sometimes offered as an alternative to the waiting period, the telephone check is discussed in this paper. Other regulatory alternatives to a waiting period are also considered.

The paper discusses the following issues: Would a waiting period have stopped John Hinckley? What do the polls of police and of citizens say about waiting periods, and what implications should be drawn from the results? What have the criminologists learned about waiting periods? What good have they done in states where they already exist? If a waiting period could save at least one life (and it certainly could) isn't it a good idea? What are the disadvantages and risks of waiting periods and other police permission systems like the instant telephone check? Are there meritorious alternatives to waiting periods? The paper also offers suggestions about how a waiting period should be structured, if a legislature elects to enact one.

The views of Handgun Control, Inc. on waiting periods and gun control are discussed throughout, because, as HCI puts it, the waiting period is the group's "flagship" bill and HCI is by far the most important gun control lobby.

[1] Footnotes at end of article.

I. JOHN HINCKLEY

Synopsis: Handgun Control, Inc. claims that a waiting period and background check "certainly" would have stopped John Hinckley, who attempted to assassinate President Reagan. Yet Hinckley had no felony record, and no public record of mental disability. HCI asserts that Hinckley was not a resident of Texas, the state where he bought the gun, and that a background check would have revealed that he was illegally buying a handgun in a state where he was not a resident. The evidence indicates that Hinckley was a legal Texas resident. In any case, HCI's proposed background check involves only criminal and mental records, and not an address check. Accordingly, it is very unlikely that the background check would have affected Hinckley.

The national waiting period is commonly known as "the Brady Bill." Its supporters named it after Sarah Brady, the Chair of HCI. To many people, the fact that a waiting period would have stopped John Hinckley from shooting President Reagan and crippling his Press Secretary Jim Brady is reason enough to enact such a law.

Both the perpetrator and the main victim of Hinckley's attack agree that a waiting period would have prevented the crime. Currently under indefinite commitment to St. Elizabeth's mental hospital in Washington, John Hinckley has petitioned to be allowed access to reporters so that he can speak out for handgun control and for a waiting period. Hinckley explains that he was in "a valium depression" when he acted, and a waiting period might have given his better self time to reassert control. But in fact, Hinckley bought the assassination gun in October 1980, months before the assassination attempt. A wait would obviously have had no impact.

Legislators usually pay little attention to the policy suggestions of the criminally insane. The more persuasive spokesperson for the waiting period is Sarah Brady, wife of the man crippled by Hinckley. "Had a waiting period been in effect seven years ago, John Hinckley would not have had the opportunity to buy the gun he used," says Mrs. Brady.[3]

Mrs. Brady bemoans the fact that Hinckley was able to buy the gun with no waiting period to see if he had a criminal or mental illness record.[4] But Hinckley had no public record of mental illness; hence a mental records check would have done no good.[5]

As for a criminal records check, a police background check was run on Hinckley a few days before he bought the gun, and nothing turned up. Hinckley was caught trying to smuggle a gun aboard a plane on October 9, 1980, in Nashville. His name was run through the National Crime Information Center, which reported, correctly, that he had no felony convictions in any jurisdiction. He was promptly released after paying a fine of $62.50 and pleading guilty to a misdemeanor.[6]

Although Mrs. Brady complains about the lack of a criminal/mental check on Hinckley, she does not explicitly affirm that such checks would have affected him. Instead, Mrs. Brady's detailed explanation involves Hinckley's residence status.

On October 13, 1980, John Hinckley walked into Rocky's Pawn Shop, in Dallas, Texas, and walked out shortly thereafter with two .22 caliber RG revolvers. As with the retail purchase of any gun, the gun dealer was required to complete a federal form which listed Hinckley's address. Because Hinckley was buying two guns in the same five-day period (in fact, at the same moment), the dealer also filled out another federal form. That

federal form was sent to the local office of the Bureau of Alcohol, Tobacco and Firearms.

By federal law, the dealer was required to verify that Hinckley was a resident of Texas, the state in which he was buying the handgun. When asked for identification, Hinckley offered his Texas driver's license.[7]

Mrs. Brady details how a background check might have helped: "He lied about his address and used an old Texas driver's license to purchase that revolver. He was not a Texas resident. A police check would have stopped him from buying a handgun in Texas."[8] As she puts it, "He lied on his purchase application. Given time, the police could have caught the lie and put him in jail."[9]

Accordingly, Mrs. Brady states: "A simple check would have stopped him . . . John Hinckley might well have been in jail instead of on his way to Washington."[10] Indeed, her assurance that the waiting period would have stopped Hinckley is often unequivocal: "There's no doubt that he would not have been able to purchase that gun."[11] Or, "John Hinckley would never have walked out of that Texas pawnshop with the handgun that came within an inch of killing Ronald Reagan."[12]

But the facts are hardly as clear-cut as Mrs. Brady asserts.

Hinckley moved around a great deal, from one Texas address to another. The Lubbock address he listed on his federal gun form (the address for a rooming house) was different from both his driver's license address and his address in the then-current Lubbock phone book.[13] Of course moving frequently is not a federal crime. Because the only purpose of the driver's license is to prove residence in the state, there is no federal requirement that a handgun purchaser reside at the street address shown on his license, as long as the address is in the same state. Even if Hinckley had deliberately made a false statement about his address, the act would not have been illegal; a false statement on the federal form is illegal only if it relates to the purchaser's eligibility.[14] While a person's state of residence does relate to eligibility, address within that state does not.

In other words, Hinckley's purchase would have been illegal under federal law only if he was not a resident of Texas. Merely offering a Texas driver's license with a street address that was no longer current and was different from the address put on the federal form was not in itself illegal.

Was Hinckley a Texas resident? Contrary to what Handgun Control implies, it has never been determined that Hinckley was not. During the previous summer, he had attended both summer sessions at Texas Tech in Lubbock. According to federal rules, a university student is considered a resident of the area where he attends school, and may purchase firearms there.[15] Notably, when Hinckley was arrested in Nashville (a few days before he bought the handguns), he identified himself as a Texas resident.

Significantly, Hinckley, after the assassination attempt, was the subject of an intensive federal investigation. The federal government used every resource possible to ensure Hinckley's conviction. Notably, Hinckley was not charged with illegally purchasing the handguns in Texas. Had the prosecutors believed that Hinckley was guilty of an illegal gun purchase, the charges would likely have been brought. After all, Hinckley would then have had to convince a Texas jury that he was insane not just on the day of the assassination, but six months beforehand.

If the full resources of the Department of Justice did not find enough evidence even to charge Hinckley with an illegal gun purchase, it is not realistic to claim that a 7-day background check would have found the exact same transaction illegal.

Moreover, law enforcement authorities already had an opportunity to run a check on Hinckley. Because Hinckley bought two handguns on the same day, his purchase was immediately reported to the Bureau of Alcohol, Tobacco and Firearms, as required by federal law.

II. PUBLIC AND POLICE OPINION

Synopsis: Polling data show that large majorities of American citizens, as well as of big-city police chiefs, favor a waiting period. Polls of command-rank officers find them skeptical about waiting periods. For all the polling, flaws in the wording of the questions probably exaggerates the extent of public support and command-rank police hostility. In any case, polls are poor guides to public policy, particularly when Constitutional rights are involved. The reflexive hostility of some police officials towards the Second, Fourth, and Fifth Amendments to the Constitution should not be entitled to much weight in the deliberative process.

A. Police

Handgun Control, Inc. and its Congressional allies claim that a waiting period is supported by "every major police organization" in the country.[23] The assertion is based on a selective definition of "major police organization." The American Federation of Police, with 103,000 members, is the second-largest rank and file police organization in the United States, and is headed by Saginaw County Deputy Dennis Ray Martin, who has won awards from President Bush for anti-drug work. Martin and the American Federation of Police oppose a waiting period. The National Association of Chiefs of Police, with 10,000 members, is the second-largest command rank organization in the United States. It opposes a waiting period. Apparently neither of these organizations, being merely the second-largest in their field qualifies as a "major police organization."[24]

Many important police organizations do support a waiting period.[25] Yet very few of these police organizations have actually bothered to ask the police what they think. One group that did ask was the Police Executive Research Forum (PERF), a Washington think tank comprising about 500 present and former big-city police executives. PERF's membership poll found 92% in favor of a national seven-day waiting period for handguns, and 6% opposed.[26] Thus, among big-city police chiefs, support for a waiting period is nearly unanimous.

The National Association of Chiefs of Police (NACOP) conducts annual national surveys of the opinion of command rank police officers. The survey is sent to all known commanders, not only NACOP members. In 1989, the waiting period questions and responses were:

"Do you believe that a waiting period to purchase a handgun or any type of firearm will have any effect on criminals getting firearms?" Yes—29.1%; No—70.9%.

"The 'Brady Bill' offers a national 7 day waiting period that gives local police or sheriffs an option to check for previous criminal activities, possible drug or alcohol dependency and mental instability. Do you think you would be able to conduct such an investigation in a 7 day period?" Yes—44.7%; No—55.3%.

"Some states have longer waiting periods and some less. Would you agree that it should be a state mandated law rather than a federal regulation as regards to firearms purchase requirements?" Should be State—62.7%; Should be Federal—37.3%.[37]

In 1990, the questions and answers were:

"Do you believe that a waiting period to purchase a handgun or any type of firearm will have any effect on criminals getting firearms?" Yes—23.9%; No—76.1%

"Do you believe that in the national 7 day waiting period proposed before Congress (Brady Bill) that you can fully determine that the applicant has no criminal record; is not mentally unsound; or is an abuser of drugs or alcohol?" Yes—14.4%; No—85.6%.

"No funds to carry out this 7 day 'investigation' are provided in this Bill for police. Do you believe that your department has the manpower to conduct this investigation without taking patrol officers off the street?" Yes—10.6%; No—89.4%.

"There is no provision to protect you from a lawsuit in the event that you approve (after 7 days) an applicant who is a criminal, may be mentally unsound, or a drug or alcohol abuser. Do you believe that the 'Brady Bill' may leave you open to a future civil lawsuit?" No—10.2%; Yes—89.8%.[28]

While the NACOP polls are interesting evidence regarding police opinion, they must be interpreted cautiously. Although every fact stated in the NACOP questions is true, the tone of some of the questions was slanted against the waiting period. A graphic example of a pollster's ability to elicit different response by slight changes in the question is shown in the contrasting 1989 and 1990 answers on whether 7 days was enough time to complete the background check. In 1989, 55% said that 7 days would not be long enough. In 1990, the question was revised to ask if the background check could be fully completed in 7 days, and the time question was followed by a question which noted that no extra funds for the check would be available. For the 1990 survey, the number of respondents who said that 7 days was not long enough shot up to 86%.

In both the 1989 and 1990 surveys, the questions about waiting periods affecting criminals were phrased in a neutral way. But the 1990 questions regarding police civil liability clearly did, like the Gallup poll on a waiting period, elicit a particular response. Notably, the neutral questions (about waiting periods affecting criminals) drew responses of about 70–76% negative on the waiting period, while the most biased question (about civil liability), drew about a 90% negative.

Accordingly, NACOP's most extreme figures, of 90% command rank hostility to the waiting period, are likely too high, for the same reason that Gallup's 91% pro-wait figures for the general public is too high. (The Gallup poll is discussed below.) The NACOP survey does seem to indicate that a majority of command rank officers (perhaps something less than 70%) are skeptical about waiting periods. The most definite conclusion that can be drawn from the NACOP and PERF surveys is that Handgun Control's claim to have the near-unanimous support of the police is true only for major urban chiefs.[29]

A large number of working officers seem to agree with Willis Booth, a former police chief, and Executive Director of the Florida Police Chiefs Association: "I think any working policemen will tell you that the crooks already have guns. If a criminal fills out an application and sends his application . . . he's the biggest, dumbest crook I've ever seen."

Put aside the evidence regarding police opinion, and hypothesize that every police

chief in the United States supported a national waiting period. Should their position determine the law?

The opinion of police chiefs is not the arbiter of our Constitutional rights. Some police executives criticize the exclusionary rule; they claim that a strong Fourth Amendment causes crime. Some police executives criticize the *Miranda* decision, and claim that a strong Fifth Amendment causes crime. Many police executives say that a strong Second Amendment causes crime. In every case the executives are wrong.[30]

Police chiefs are, after all, not generally renowned for their regard to the Constitution. As the NACOP polling indicates, huge majorities of command ranks favor sharp limits on death penalty appeals, draconian drug laws, and widespread drug testing.

Likewise, self-proclaimed allies of law enforcement have eroded their credibility by supporting bans on "plastic guns" (which do not exist) or by claiming that a law which lets a Pennsylvania hunter drive to Maine without obtaining a New York gun permit would threaten the lives of police officers.[31]

In short, the reflexive hostility of some police officials toward the Second, Fourth, and Fifth Amendments is not entitled to much weight in the deliberative process.

Why does the waiting period have nearly unanimous support among big-city police executives? While it is true that some big-city chiefs (such as Ari Zavaras of Denver and Joseph McNamara of San Jose) are ardent enemies of the right to bear arms, not all chiefs are out to destroy gun ownership. One reason for supporting the waiting period is its intuitive appeal; at first glance, it seems like a way to interdict at least some criminals, without interfering with legitimate gun owners.

Perhaps another reason that some police chiefs favor the waiting period is that police chiefs, like any other administrators of large government offices, often seek to expand their official power. From the perspective of a police administrator, more power may mean more officers performing administrative tasks and supervising more transactions by the citizenry. The same mentality leads to the creation of paperwork empires in the Pentagon or in the Hubert H. Humphrey building, even if the emphasis on paperwork hinders the agency's performance of its assigned mission.

B. Public opinion polls

The Gallup Poll reports: "91% of Americans Favor Brady Amendment."[32] If the polls are for it, who can be against it?

One reason to be cautious about polls is that the bias of the pollster can skew the poll. By modifying the wording of a question, "You can come up with any result you want," says Peter Hart, pollster for the Dukakis campaign.

The Gallup poll about waiting periods posed the question in a way that assumed the waiting period really would help the police keep guns away from illegitimate persons: "Would you favor or oppose a national law requiring a seven-day waiting period before a handgun could be purchased, in order to determine whether the prospective buyer has been convicted of a felony or is mentally ill."[33] As discussed below, the criminological and real-world evidence on waiting periods shows that they do virtually no good in keeping illegitimate users from getting guns; criminals do not buy guns in gun stores.

Most people are for something that works. If the question assumes that a waiting period would work, it is bound to receive nearly unanimous support. But the real question is whether waiting periods work as well as Gallup assumed they do.

The most important reason polls should not always prevail is because the Constitution does not depend on polls. Violating the Constitution can be a popular thing. By huge majorities, Americans would favor all of the following:

Banning use of civic auditoriums by atheists, or by people denouncing the government, or by patriotic groups advocating war against a foreign enemy;

Using a federal censorship board to decide which television shows are permissible;

Infiltrating non-violent dissident groups with FBI agents.[34]

Every one of those popular ideas would violate the Constitution. The precise reason for putting certain fundamental rights in the Constitution is to protect them from transient majorities.[35]

No measure could have been more unconstitutional than herding American citizens of Japanese descent into concentration camps during WWII. Public opinion and the press almost unanimously favored this repression, despite the total lack of evidence that these Americans were disloyal.

Even though the public sometimes backs unconstitutional measures, the public still has the common sense to know that the Constitution is more important. One survey asked: "Suppose the President and Congress have to violate a Constitutional principle to pass an important law the people wanted. Would you support them in this action?"

28% said yes, "because the Constitution shouldn't be allowed to stand in the way of what the people need and want."

49% said no, "because protecting the Constitution is more important to the national welfare than any law could possibly be."[36]

Finally, while the majority of the public does favor a waiting period (although probably by less than the 91% majority found by Gallup's biased question), the public opposes "a law giving police the power to decide who may or may not own firearms" by a 65% to 29% margin.[37] Accordingly, if a waiting period were conducted within the limits implied in the Gallup poll (every legitimate owner got the gun in no more than seven days), the public might well support a waiting period. But if waiting periods turned out to give police the opportunity to interfere with citizens' right to buy firearms, the large majority of the public would oppose a waiting period. As detailed below, waiting periods in practice often lead to the kinds of police abuses which the public overwhelmingly opposes.

III. CRIMINOLOGICAL STUDIES

Synopsis: Criminologists of every persuasion have examined waiting periods, and not one has found statistically significant evidence that waiting periods are effective. Studies of felony prisoners show that virtually none of them obtain crime guns by personal over the counter purchase, the only kind of criminal gun acquisition that a background check could stop.

"Virtually every study ever conducted proves that where there are local or state laws requiring a waiting period and background check, handguns are harder to obtain by those who are prone to misuse them," claims Handgun Control, Inc.[38] The claim is false. Every study of waiting periods has found no evidence that they are effective. There is not a single study published in any academic journal which concludes waiting periods are effective. The results show just the opposite.

Professor Matthew DeZee states: "I firmly believe that more restrictive legislation is necessary to reduce the volume of gun crime." Yet his comparative study of state laws, including waiting periods, found "The results indicate that not a single gun control law, and not all the gun control laws added together, had a significant impact . . . in determining gun violence. It appears, then, that present legislation created to reduce the level of violence in society falls short of its goals . . . Gun laws do not appear to affect gun crimes."[39]

Professors Joseph P. Magadinno and Marshall H. Medoff, both of California State University, Long Beach, performed two studies of waiting periods at the state level. The first study, using data from 1979 and previous years, compared the 1979 robbery and homicide rates in states that had waiting periods with states that did not. The study also looked at changes in the robbery and homicide rates in states which had recently changed their laws regarding firearms sales. Both aspects of the study found that there was no correlation between waiting periods and lower homicide or robbery rates.[40]

The second Magadinno-Medoff analyzed state gun laws and rates of homicide, robbery, and aggravated assault in 1960 and 1970. The results were consistent with the hypothesis that stricter gun control laws have no impact on crime.[41]

When the U.S. Senate Judiciary Committee investigated the issue, the Committee found no evidence that waiting periods affect crime. There was no correlation between a waiting period and lower crime rates.[42]

Duke University's Philip Cook, who is generally supportive of gun control, explains why there is no apparent statistical impact:

"[W]e suspect that most felons and other ineligibles who obtain guns do so not because the state's screening system fails to discover their criminal record, but rather because these people find ways of circumventing the screening system entirely . . . Under these circumstances, developing a more intensive and reliable screening process is probably not worth the additional cost . . . It is known that such screening systems are widely circumvented and, furthermore, that state criminal record files are sufficiently incomplete that a felon who did choose to submit to the required police check before buying a handgun would have a sporting chance of having his application accepted."[43]

Assistant Attorney General John Bolton observes, "Those persons with a criminal record who are prohibited from purchasing a handgun are the ones most likely to obtain false identification documents to support a new name."[44]

Of course the Magadinno-Medoff, Senate Judiciary, and DeZee studies do not completely destroy the case for a waiting period. It might be that state waiting periods have a small impact on crime, even if that impact is too small to be statistically significant. Moreover, even if state waiting periods were acknowledged as demonstrable failures, it might be that a federal wait would be effective.

Under the Carter Administration, the National Institute of Justice offered a grant to the former president of the American Sociological Association and two colleagues to survey the field of research on gun control. Peter Rossi and his coauthors Jim Wright and Kathleen Daly began their work convinced of the need for strict national gun control. Indeed, Wright had already written about the need for more control. After looking at the data, however, the three research-

ers found no convincing evidence that gun control curbs crime.[45]

A few years later, Wright and Rossi conducted another National Institute of Justice study, this one of the gun use patterns of criminals. They interviewed prisoners in ten state systems. The study confirmed that many criminals are indeed frightened of armed citizens.[46] Notably, the second National Institute of Justice study discovered that felons in states with strict laws found obtaining a gun no more difficult than in states with more moderate laws. Almost all felons, regardless of the severity of their state's laws, reported that they would have little or no difficulty obtaining a gun soon after release.

Wright and Rossi asked the prisoners where they obtained their last handgun, and 21% replied at a gun store. Hence, HCI argues, a waiting period and background check would affect a significant figure of gun crimes. But Wright and Rossi disagree with HCI's interpretation of their data. They write:

"One might as a matter of federal policy require that every firearms transaction be reported to the cognizant authorities, and the appropriate criminal records check undertaken; but one quickly senses that this measure would have little or no effect on the criminal users whom we are trying to interdict and a considerable effect on legitimate users. . . . The ideal gun crime policy is one that impacts directly on the illicit user but leaves the legitimate user pretty much alone."[47]

Careful analysis of the Wright-Rossi data shows that far less than 21% of criminal gun users would be affected by a background check. The 21% who obtained their last crime handgun at a gun store included 5% who had obtained the gun by theft, rather than by purchase. Of the 16% who had obtained the gun by purchase, at least some likely did not have disqualifying criminal records at the time of purchase.

Further, not all of the guns acquired by criminals are acquired for crime. (Many criminals live in neighborhoods with other criminals, and hence own guns for defense.) The more likely a felon was to be a serious gun criminal, the less likely he was to have acquired a retail gun. For example, of the criminals who specialized in unarmed crime, 30% obtained their most recent handgun at a store (by purchase or by theft.) Of the "handgun predators" who specialize in handgun crime, only 7% had gotten a handgun from a store. For criminals as a whole, of the guns that had been obtained "to use in a crime," 12% came from a store.[48]

Since about one-fourth of the handguns from stores were stolen from stores, only about 9% of handguns obtained to use in a crime, (and about 5–6% of handguns obtained by handgun predators) came from a retail purchase. Nine percent or even five percent still seems to be a significant number of criminals buying guns in gun stores. But Wright and Rossi explain that their data: "does not imply that the men in question themselves simply walked into a gun shop and bought themselves a gun, in direct defiance of the Gun Control Act of 1968. In many cases, these purchases would have been made in the felon's behalf by friends or associates with "clean" records, which is, to be sure, still quite illegal. Although, we asked these men where and how they had obtained their most recent guns, we did not ask who, exactly, had obtained them."[49]

Assuming that only half the purchases were made by legal surrogates, the background check is entirely irrelevant to 95–98% of crime gun acquisitions.

The large majority of all gun acquisitions are by people who already own a gun. If the pattern also holds true for criminals, then the background check would impact only a fraction of the already tiny percentage of criminals who personally buy guns at retail. In other words, of all guns acquired for crime, only about 0.5% to 2% are personally bought at a retail outlet by a person with an existing criminal record who does not already have another gun.[50]

The basic problem with waiting periods is shown by a Bureau of Alcohol, Tobacco and Firearms study of gun dealer sales in Des Moines and Greenville. The study found that about one to two percent of sales were to dangerous criminals.[51] In short, waiting periods have no statistically noticeable impact on any type of crime because only a tiny fraction of crime guns are purchased at retail by ineligible buyers.

Waiting periods have existed in some states for over half a century. Yet after all this time, there is not a single criminological study ever published which shows waiting periods to have any beneficial impact. While the researchers who have studied waiting periods have very diverse views on the gun debate in general, *all* researchers have concluded that there is no evidence that waiting periods cause any statistically significant benefits.

IV. THE WAITING PERIOD (IN)ACTION

Synopsis: Although no evidence ties waiting periods to reduced crime rates, the experience of states with waiting periods shows only a small percentage of retail gun buyers are denied because of criminal records. Of these, about 1% are deemed worth arresting. The number of people who are illegally or arbitrarily denied their right to bear arms by abuse of a background check system is about as large as, and sometimes far larger than, the number of criminals denied.

Although the academics have never found any statistically significant effect from waiting periods, it would be incorrect to conclude that waiting periods accomplish nothing. The following section reports results in several jurisdictions that already have waiting periods. The particular jurisdictions discussed were selected because: 1. The police have compiled and released data for that jurisdiction; and 2. The jurisdiction is cited as a success story by Handgun Control, Inc.; 3. Data is available to test the veracity of the figures from the police or HCI. The data shows that: 1. Some people with criminal or mental records do attempt retail gun purchases, and are stopped by a background check; 2. Handgun Control, Inc. consistently overstates the efficacy of the background check in its model jurisdictions.

California: Officials state that their background check for handguns interdicted 1,900 illegal purchases in 1989.[52] Nevertheless, California's handgun homicide rate rose 21% from 1979 to 1988, even as gun laws grew tighter.[53] California has no appeals process, so it is impossible to determine how many of the denials are proper. As discussed below, the California waiting period forms have been used to build a government data-base of gun owners.

About 10% of California's 300,000 "assault weapon" owners have registered their weapons, as required by law. The group that complied with the retroactive registration law surely qualifies as a highly law-abiding set of people. Yet this group of highly law-abiding gun-owners, when they attempt to buy a new rifle or pistol following California's 15-day waiting period, find that the California Department of Justice has put a 1 to 4 month hold on their application, because they are registered "assault weapon" owners.[54]

A Los Angeles City Councilman, noting the thriving market in stolen Rolex watches, has suggested that all Rolex watches be registered, and a five-day waiting period be imposed on transfers of second-hand Rolexes. The Rolex waiting period has been ridiculed by most other Los Angeles politicians, and written up in the national press as another instance of California silliness. It might be asked why so many people who dismiss the idea that registration and a waiting period would affect the criminal sale of Rolex watches think that registration and a waiting period would affect the criminal sale of firearms.

Broward County, Florida: Handgun Control correctly notes that in 1984–85, 37 persons were kept from buying guns by the county's ten waiting day period (which has since been preempted by state law).[55] Handgun Control fails to point out that nearly half of the rejections were for unpaid traffic tickets or similar offenses which do not legally disqualify Floridians from gun ownership.[56] HCI also fails to point out that gun suicides actually increased after the waiting period was implemented.

Columbus, Georgia: HCI claims that the city's 3-day wait catches two felons a week trying to buy handguns.[57] HCI exaggerates the rate four-fold, and implies that the numbers relate to arrests, rather than merely to denials.[58]

Illinois: Prospective gun purchasers must obtain a Firearms Owners Identification card (FOID), which is valid for five years. There are about 5,000 applications every week for the card. Over the weekend, a list of applicants is run through the State Department of Mental Health, revealing about 10 applicants who are ineligible to buy because of mental disability.[59] Illinois' automated licensing system often takes 60 days to authorize a clearance.[60]

Illinois issues FOID cards to about 78% of applicants. Another 17% are issued a card after following up an initial rejection, for a total about 20,000 FOID cards issued annually. Around 5% of applications are ultimately rejected. In 1988, there were 2,470 persons (about 2.5% of applicants) denied an FOID card on the basis of felony convictions, and 779 previously-issued cards were revoked due to felony convictions.[61]

The most thorough study of the Illinois system was conducted by Professor David Bordua. Happily, "the system was run with real attention to due process protections for firearms owners." Unfortunately, "even its administrators were not convinced it was effective." The system, which costs over a million dollars a year to process, was summarized as "inherently weak."[62]

Maryland: About 700–800 of every 20,000 applicants a given year are denied. (The waiting period/police permission applies to all handguns and to long guns considered "assault weapons.") According to state police testimony before a Congressional subcommittee, the hundreds of denials typically lead to only a handful of prosecutions.[63]

Notably, 78% of appeals result in a reversal of the initial denial by the police.[64] The success rate on appeals likely understates the police error rate in initial denials. Many people who have been improperly denied may have neither the finances nor the energy to pursue an appeal. (Similarly, the ACLU indicates that only a minority of people improperly denied welfare benefits appeal.)

Although the waiting period is by statute supposed to last only one week, the police may take longer, and gun shops will not release the firearm until the police have completed their review.

New Jersey: Firearms laws in New Jersey are the strictest of any American state. Handgun Control states that "10,000 convicted felons have been caught trying to buy handguns.[65] The cost to legitimate gun owners has been severe. The number of New Jersey citizens arbitrarily denied the right to possess arms under the New Jersey law is almost as large as the number of criminals who were prevented from law-abiding transactions.[66] About one-quarter of the rejections in New Jersey are based on the hunch of police that it would not be a good idea for a person to own a gun, rather than on any specific disqualifying criterion.[67] Although New Jersey law requires that the authorities act on gun license applications within 30 days, delays of 90 days are routine; some applications are delayed for years, for no valid reason.[68]

The cost to the non-gun-owning citizens of New Jersey has also been severe. The New Jersey licensing system is so expensive that it costs $4,442.13 (more than the salary of a state trooper for one month) for each denial based on criminal, mental, or alcohol abuse records.[69] It might be that the resources diverted into the licensing system might have saved far more lives if they had been spent on putting state troopers on patrol, instead of putting troopers behind a desk.

The overall crime rate and the gun crime rate in New Jersey has remained consistent with the rate in other states in the region, even though none of them imposes gun controls as strict as New Jersey's.

Pennsylvania: In Pennsylvania, handgun buyers face a 48 hour waiting period (72 hours in practice), during which local police or sheriff may conduct a check.[70] After the buyer picks up the handgun, the transaction record is sent to the state police firearms unit, which checks the name against a list of violent felons. Data for the first check by local police is kept at the county level, so there are no comprehensive figures available.

In addition to checking the approximately 130,000–150,000 handgun transfers that occur in a year, the state police are also automating their old records of firearms transfers (which date back to 1931), and checking the old names against the same list of violent felons. In 1988, the state police performed about 230,000 total records checks, resulting in about 80 "hits."

When a "hit" is found, state troopers are sent to confiscate the gun, and the local district attorney may bring charges for unlawful gun possession by a felon. Ms. Sharon Crawford, head of the state police firearms unit, recalled only one case in her memory where a person had committed a crime in the two to three week interval between taking possession of the gun and the arrival of the state trooper, or had refused to hand the gun over to the trooper. In the one case, the person had shot (not fatally) someone else during an argument.

The explanation for the generally peaceful behavior of the persons caught with illegal guns is that the purchases were not with the intention of use in a crime, but rather were self-defense and/or hunting purchases by persons who did not realize they were ineligible or who hoped to slip through the system.[71]

The Pennsylvania data validates the findings by Wright and Rossi: there are many attempted and/or completed firearms acquisitions by ex-felons that are unrelated to any effort to use the gun in a crime. Accordingly, the number of crimes prevented by a system that keeps ex-felons from buying guns in stores is likely to be significantly less than the number of ex-felons who are caught buying guns. (All this is not to say that the "felon-in-possession" cases should not be prosecuted or taken seriously; the point is simply that most attempted acquisitions were not for a criminal purpose.)

It would not be correct to use the Pennsylvania state data to conclude that background checks are pointless. The data above refers only to the state police check of names against violent felony convictions. The data do not show what impact the first check, by the local police, has had. It might be that most felons buying guns for crime are stopped at the local level, and are hence never checked by the state system.

Virginia: In 1989, Virginia enacted an instant telephone check, with the consent of both HCI and the NRA. About 16 to 20% of phone applications result in a "hit," requiring the rejected applicant to submit fingerprints to the police to prove his non-criminal identity.[72] The ultimate denial rate of about ½% to 1% is the same as in other states with longer waiting periods. The first year the check was in effect, there were 540 denials, leading to arrest of 7 fugitives, including one wanted for murder.[73] (There was also at least one false arrest.) The Virginia system required 16 new full-time state employees, and $391,000 in annual operating costs.[74] Because the Virginia system appears to be working reasonably well, it is touted as model by many right-to-bear arms advocates.

In sum, the evidence shows that a permission system does result in some denials, at least half of which turn out to be incorrect. Even for the denials that are correctly applied to ineligible purchasers, it is not correct to assume that the denial has thereby prevented a crime. Virtually no-one who intends to commit a gun crime buys from a gun store. Ineligible people do sometimes attempt retail transactions, but that act is hardly proof that they intended a crime.

Of the people who are rejected by permission systems, a mere 1 percent are arrested.[75] In other words, where a permission system is in effect, about 1 in 10,000 applicants turns out to be a criminal who is arrested. A success rate of one true "hit" for every 10,000 searches is, literally, not much better than the odds of finding a needle a haystack—and is not cost-effective method of catching needles.

V. PARTICULAR TARGETS OF WAITING PERIODS

Synopsis: The suggestion that people who transact in illegal drugs could be denied firearms under any gun control system is patently silly. Psychotic mass murderers have repeatedly bought guns in states with waiting periods. There is no evidence that waiting periods prevent suicides or domestic homicides. Hardly any crimes could even theoretically be prevented by a "cooling off" period. A perfect waiting period or other permission system would not even stop criminals from getting even retail guns. False identification is not hard to procure. And although a fingerprint or other biometric check would defeat false identification, most criminals would still likely know someone without a felony record. The surrogate buyer could still buy a gun for a criminal at retail.

Although waiting periods might have little impact on the average criminal, it is sometimes suggested that waiting periods might deter particular kinds of gun misusers.

A. Drug dealers

In 1988, Handgun Control, Inc. attempted to hang its national waiting period on the drug bill, under the theory that the waiting period would disarm narcotics distributors. HCI still continues to promise that a waiting period will help take guns away from drug dealers.[76]

It stretches credulity to promise that any kind of gun legislation, including a waiting period, would have the slightest impact on drug dealers. Dealers, being expert in the black market, would have the readiest access to false identification, and to underground supplies. They are the last people gun control could impact.

Drug dealers obviously cannot count on the police or the courts for protection from violence. Because of this, and because dealers are a valuable robbery target, it would virtually be suicide for them not to carry a gun.[77]

In addition, drug dealers cannot use normal legal and social commercial dispute resolution mechanisms. Like the gangsters of alcohol prohibition days, drug dealers need guns to protect their business' income and territory. Thus, many drug dealers must own a gun for their lives and their livelihood.

No matter how scarce guns become for civilians, there will always be one for a criminal who can pay enough. Street handguns now sell for less than $100. If the price went up to $2,000, dealers would still buy them, because dealers would have to. Spending a few hours' or days' profits on self-protection is the only logical decision for a dealer. Can anyone really believe that an individual who buys pure heroin by the ounce, who transacts in the highly illegal chemicals used to produce amphetamine, or who sells cocaine on the toughest street-corners in the worst neighborhoods will not know where to buy an illegal gun?

B. Homicidal maniacs

Patrick Purdy, who killed five children in Stockton, California, bought five guns over the counter in California, despite the state's strict 15-day waiting period. Laurie Dann bought a handgun and shot up a second grade classroom in Illinois, killing one child, wounding five, and then killing herself despite that state's requirement that all gun owners be licensed, and still undergo a waiting period before each firearm acquisition.[78] Mark David Chapman, John Lennon's assassin, bought a handgun in Hawaii, a state with one of the strictest waiting periods in the nation. Canada has a nationwide licensing system, yet a deranged man was able to buy a rifle with which he shot and killed 14 women in December 1989.[79] Criminals like Eugene Thompson (a felon and a cocaine addict who shot up a Denver suburb in March 1989) do not buy guns legally; they steal them. The criminally insane are criminally insane day off and on for years and years, not just for the three weeks covered by a waiting period. They periodically consult psychiatrists and acquire firearms without immediately or soon thereafter perpetrating crimes of insanity.

The latest claim that a waiting period would have stopped a maniac involves a mental patient who bought a gun in an Atlanta suburb without a wait, shot up shoppers at Atlanta's Perimeter Mall, killed one of them, and wounded four others. DeKalb County promptly approved a 15 day waiting period.[80] Handgun Control's national fundraising claims that the killer would have been stopped had a waiting period been in effect.[81] The claim is false; the killer's record of mental disorder was entirely private, and

he had never been adjudicated mentally incompetent, or involuntarily committed.

C. Suicides

There are simply too many other ways for people to kill themselves. After Canada implemented a national licensing system in 1978, its gun suicide rate did drop;[82] but the overall suicide rate remained the same.[83] Japan almost totally bans guns, but suffers a suicide rate twice the U.S. level.[84]

D. Domestic homicides

Many handgun control advocates assume that a waiting period would prevent "impulse killings."[85] But most domestic killings occur at night, when gun stores are closed. Most perpetrators are intoxicated with drugs and alcohol, and thus legally forbidden to buy a gun anyway. The image of a murderously enraged person leaving home, driving to a gun store, finding one open after 10 p.m. (when most crimes of passion occur), buying a weapon, and driving home to kill is a little silly.[86]

In any case, husbands who kill wives rarely use guns. Wives who kill husbands do often use guns, and are usually defending themselves or their children against felonious attacks.[87]

E. People in need of "cooling-off"

Criminologist Gary Kleck points out that for a "cooling-off" period to prevent homicide, a number of conditions must be fulfilled: 1. The gun the killer used was the only one he owned, or the only one he could have used in the crime; 2. The killer acquired the gun from a source that would be expected to obey gun control laws (a licensed dealer); 3. The gun was purchased and used in the homicide in a time period shorter than the "cooling-off" period. Discussing an analysis of 1982 Florida homicides, Kleck found that 0.9% (about 1 in 100) homicides fit all three criteria. He estimated that nationally about 0.5% (1 in 200) would fit all three criteria.

Nevertheless, Kleck suggested that a waiting period would not prevent even 1 in 200 homicides. For the homicide to actually be prevented, several other conditions would all have to be fulfilled: 1. The killer was the kind of person who would not have been willing to kill even afer waiting; in other words, the killing was an isolated act, rather than the culmination of a log history of assaults by the killer; 2. The killer would not have acquired and successfully used a gun that did not require cooling off (such as a long gun, in most states); 3. The killer would not have been able to complete the homicide with any weapon other than a gun; 4. The killer would not have been able or willing to obtain a gun from a non-retail source. Considering all the necessary criteria, Kleck did not find any Florida homicides which a cooling-off period clearly would have prevented.[88] While supporting a background check, Kleck concluded that a cooling-off period would in itself do no good. Hence, he thought the waiting period to offer no advantage over the instant check.

F. Summary: What benefits can be expected from a waiting period?

New York City Mayor David Dinkins asserts that "The Brady Bill could save thousands of lives in its first year."[89] Although many credulous New Yorkers believed their Mayor, and flooded House of Representatives Speaker Tom Foley's office with phone calls demanding passage of the waiting period, there is not a serious criminologist in the United States who thinks the Mayor's assertion has any basis in reality.

A perfect waiting period or other permission system would not even stop criminals from getting retail guns. False identification is not hard to procure. And although a fingerprint or other biometric check would defeat false identification, most criminals would still likely know someone without a felony record. The surrogate buyer could still buy a gun for a criminal at retail.

When pressed for whether the waiting period will deprive criminals of guns, HCI demurs, but expresses confidence that a waiting period will make gun acquisition more troublesome for criminals.[90] Likewise, the Federal Task Force which studied background checks acknowledges that "[E]ven a perfect felon identification system would not keep most felons from acquiring firearms,"[91] but nonetheless supported a permission system, hoping that by forcing some criminal buyers onto the black market would leave them less able to obtain high-quality firearms.[92]

But would a waiting period or other permission even inconvenience criminals, considering that hardly any of them obtain crime guns through dealers anyway? Moreover, the current black market supplies even fully automatic firearms, which have been under a strict federal licensing system since 1934, and have been illegal to manufacture for civilians since 1986. If the black market can supply machine guns, it is doubtful that it cannot supply other high-quality weapons.

Still, as Professors Cook and Blose point out, there must be at least a few inexperienced or impecunious criminals for whom even a porous permission system would delay gun acquisition for at least some period. Moreover, the waiting period, simply because it will reduce gun sales to legal purchasers (see below) would reduce the number of guns in circulation. It seems likely that one of those unbought guns might one day have been part of a suicide or homicide or accident that might not otherwise have occurred.

Proponents of permission systems say that they will be successful if they save a single life.[93] It seems clear that a waiting period or other permission system would, inevitably, prevent at least one firearms fatality. Even if a waiting period would have no discernible impact on crime in general, it would save at least one life. Is it therefore a good idea? The next Part discusses that question.

VI. PROBLEMS CAUSED BY A WAITING PERIOD

Synopsis: Substantial police resources are inefficiently diverted from street patrol to desk work. A background check consumes about $40,000 in police salary for every arrest it produces. Resources may be further consumed by lawsuits regarding allegedly insufficient background checks. Waiting periods prevent a person from acquiring a gun for several days, and if implemented improperly (as they often are) waiting periods may result in total denial of a person's legitimate right to bear arms. The diversion of police resources, coupled with the interference with the acquisiton of self-defense guns, may mean that a waiting period would cause a net loss of lives.

Severe problems with the data quality of existing criminal justice records will result in large numbers of false denials, requiring the victims to undergo a lengthy process to prove that they are not criminals. An initial denial stands only a 50% chance of being accurate and proper.

Moreover, waiting periods may provide a mechanism for gun registration, erode the confidentiality of medical records, and work a substantial financial hardship on the firearms dealers and users. Advocates of gun prohibition see waiting periods as a useful first step towards their ultimate goal.

A. The drain on police resources

Police resources are finite. The question is not whether a waiting period would save one life, but whether other uses of the police resources spent administering a waiting period might save more lives if used elsewhere.

Under a national comprehensive waiting period, the drain on police resources would be staggering. There are approximately 7.5 million firearms transactions annually.[94] If a waiting period were to be rigorous enough to stop future Hinckleys, it would have to include in-person address verification. (See Part I, above.) How many hours would it take for a policeman to run a national criminal records check, and to visit the home of every person who applied? One hour, at the very least. That would be 7.5 million police hours spent checking up on honest citizens, instead of looking for criminals. In the haystack of applications by honest citizens, police would search for a few needles left by the nation's very stupidest criminals. Looking for crime, police officers would be directed into a paperwork enterprise particularly unlikely to lead to criminals. Would not all those millions of police hours be better spent on patrol, on the streets instead of behind a desk?[95]

According to the Task Force, implementing a national comprehensive permission system would require the FBI to hire 395 additional clerical employees to process the requests for fingerprint card readings for the (approximately) 725,000 citizens who would be denied permission to purchase because they have the same name as a criminal, or because police records noted an arrest but not a subsequent acquittal.

A national waiting period and background check could cost from tens to hundred millions of dollars.[96] Applying the 1 arrest per 10,000 applicant review figure, each arrest would cost approximately 40,000 dollars, or the one-year salary of a full-time, fairly senior police officer.[97]

Such profligate use of police manpower is an impediment to crime control. One useful notification to existing waiting periods would be to exempt persons who already have a gun. (Proof of lawful purchase of another gun might suffice for the exemption.) After all, a person who buys a second revolver is hardly more dangerous than a person with only one gun.

The waiting period is an impediment to effective law enforcement in a more subtle way also: Local politicians who are failing to take effective steps to control crime use the campaign for a national waiting period as a tool to divert the attention to the national scene away from local law enforcement. For example, after Utah tourist Brian Watkins was stabbed in a New York city subway in the summer of 1990, New York Mayor Dinkins announced that what was needed to stop New York City crime was a national gun waiting period, or even gun prohibition. The Mayor now makes the call for a national "Brady Bill" the centerpiece of his response to publicized shootings in New York, regardless of whether evidence indicates that a waiting period would have had an effect on the particular shootings.[98]

B. Lawsuits against the police

At a time when local police resources are already stretched thin, the national waiting period bill imposes very substantial paperwork and manpower requirements on most police forces in the country. The bill claims it is cost-free, because the background check would be optional. But the bill's prime lobbyist, Handgun Control Inc., has already announced that its legal defense fund will sue

police departments that do not implement the backgound check.[99] Much to the delight of Handgun Control, a woman has already won $350,000 from the city of Philadelphia for not conducting a thorough enough background check of a man who killed her husband.[100]

In this regard, it is astonishing that persons who claim to speak for the nation's police want a law to make police departments everywhere vulnerable to a brand new form of tort litigation.

C. Covert registration

Waiting periods and other permission systems can operate as de facto gun registration. Once the police are told who is applying to buy a gun, they may simply add that person's name to their list of gun owners, as is the practice in New Jersey, New York and other states. The California Justice Department has used the waiting period, without statutory authorization to do so, to compile a list of handgun owners.[101] In Oregon, the police are allowed to retain handgun purchase records up to five years.

One attempted solution to problem of covert registration is to require the police to destroy the purchase application records. The national waiting period bill purports to require record destruction, but does not really do so.[102] Moreover, not even the toughest language in a federal bill could compel a state officer to destroy records, because Congress has no authority to compel an act by a state or local officer which is not required by the U.S. Constitution.[103]

Under neither proposed federal nor existing state systems is the pretense of required destruction backed up by meaningful enforcement. Police who keep illegal records are subject to no penalties or civil liability. Significantly, the practice of making daily computer back-up tapes means that even if original records are destroyed, back-up records will still exist.

Precisely because most waiting periods amount to covert registration, many otherwise law-abiding gun owners will resist them.[104] The principal objection of Constitutionalists to gun registration is that it has frequently been a prelude to and a tool for gun confiscation.[105] Additionally, the government has no authority to register people merely for exercising their Constitutional rights.[106]

In states where waiting periods already exist, the legislature should specify liquidated damages against officials who illegally compile registration lists. In cases of intentional wrong-doing, criminal prosecutions, similar to existing criminal prosecutions for federal Privacy Act violations, should be allowed.[107]

D. Privacy of medical records

The vast majority of people with mental illnesses, such as John Hinckley, never enter state treatment systems. Pressure will inevitably build to end the confidentiality of private medical records, so the police can check these records as well. In California, legislators enacting a comprehensive waiting period were told that mental health records would be kept fully confidential. But the same year the law was enacted, the California Department of Justice began ordering public and private mental health clinics to report their clients to the state, which puts them in a database along with felons that is useable by the police. Included in the database are non-violent persons who have voluntarily checked themselves into private facilities for problems such as anxiety or stress.[108] A number of jurisdictions already require purchasers to waive the confidentiality of their medical or mental health records.[109] Illinois queries, "Are you mentally retarded?"[110] New Jersey asks the McCarthy-style question "Have your even been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an in-patient or outpatient basis for any mental or psychiatric condition?" The State also inquires, "Do you suffer from a physical defect or sickness?"[111] The mother who consulted a psychiatrist on one occasion because her son had died must confess herself to the New Jersey police, upon pain of criminal prosecution.[112]

And it is not only the government that can use firearms background checks to disclose private medical information. An employer can conduct inexpensive inquiries into the mental health records and criminal background of prospective or current employees by ordering them to produce proof that they are eligible to buy a gun, and hence have no mental or criminal record. Some employers in Illinois use this tactic.

E. Denial of ability to obtain a gun

A waiting period provides anti-rights police administrators with an easy opportunity for abuse. In New Jersey, the police often simply refuse to process gun purchase applications.[113] In cases of budgetary constraint, firearms applications may suffer inordinate or even permanent delays.[114]

Although a statute may specifically limit the reasons for disqualifying a buyer, police may disqualify for other, illegal reasons. In Maryland, where an appeals process exists, the police are over-ruled on 78% of appeals.[115]

Indeed, many of the police departments which most vociferously champion "reasonable" gun controls routinely abuse those controls once enacted. The St. Louis police have denied permits to homosexuals, nonvoters, and wives who lack their husband's permission.[116] Although New Jersey law requires that the authorities act on gun license applications within 30 days, delays of 90 days are routine; some applications are delayed for years, for no valid reason.[117] Mayor Richard Hatcher of Gary, Indiana, ordered his police department not to give license application forms to anyone.[118] The Police Department in New York City has refused to issue legally-required licenses, even when twice commanded by appeals courts to do so. The Department has also refused to even hand out blank application forms.[119]

Most police, fortunately, are law-abiding, and would not engage in the abuses typical in New York City and Maryland. Nevertheless, even in law-abiding jurisdictions, the waiting period, by definition, delays for a number of days a citizen's acquisition of a firearm. For a hunter planning a trip next month, the delay is inconsequential. For a young woman being threatened by an ex-boyfriend, the delay may be fatal.

Simply put, seven days is too long for a woman whose ex-boyfriend is promising to come over and batter her. Seven days is too long for families when a burglar strikes three homes in a neighborhood in one week, and may strike that night. Twenty-four hours is too long to wait when the Gainesville serial murderer is loose, and every woman is a potential victim.

The issue is not hypothetical. In September 1990, a mail carrier named Catherine Latta of Charlotte, North Carolina, went to the police to obtain permission to buy a handgun. Her ex-boyfriend had previously robbed her, assaulted her several times, and raped her. The clerk at the sheriff's office informed her the gun permit would take two to four weeks. "I told her I'd be dead by then," Ms. Latta later recalled. That afternoon, she went to a bad part of town, and bought an illegal $20 semi-automatic pistol on the street. Five hours later, her ex-boyfriend attacked her outside her house, and she shot him dead. The county prosecutor decided not to prosecute Ms. Latta for either the self-defense homicide, or the illegal gun.[120]

In 1985 in San Leandro, California, a woman and her daughter were threatened by a neighbor. Instead of being able immediately to obtain a handgun for self-defense, the woman had to wait 15 days. The day after she finally was allowed to pick up her gun, the neighbor attacked them, and she shot him in self-defense. Had the man attacked 14 days after his initial threat, rather than 16 days after, the woman and her daughter would have been raped. Of course the state of California would have denied liability, as it has repeatedly denied liability for its failure to protect citizens against specific threats from specific criminals.

The national waiting period proposal does allow a waiver of the 7-day wait if the locality's chief law enforcement official (or his designee) issues a written order stating that immediate purchase is necessary to protect the life of the gun purchaser or someone in her household.[121] In practical terms, it is very doubtful that a potential crime victim (particularly the poor and minorities who are the victims of most violent crime), will be able to obtain a rapid appointment with the police administrator who will issue a gun authorization. If the administrator is out of town, or busy, or uninterested, the victim is out of luck. And if the potential victim is receiving threatening phone calls that deal only with rape, aggravated assault, or mayhem, even a sympathetic police chief cannot issue an exemption, since there is no threat to the victim's life.

Some of the people killed by a waiting period could, ironically, be people who have volunteered to defend the United States. Members of the armed forces are allowed to carry handguns as sidearms, if they so choose. Many infantry grunts might want a Colt .45 or a Glock 9mm on their hip, in case their government-issue M-16 rifle jams in a firefight. Television stations in Texas and Alabama reported high levels of sales of 9 millimeter handguns to servicemen shipping out to Saudi Arabia. But in states like California, with a minimum wait of 15 days, the short period between notification of call-up and departure date is not enough time for a soldier to be cleared by the firearms control apparatus. As a result, soldiers from California and similar states were placed in greater peril.[122] Happily, the rapid collapse of the Iraqi army reduced the importance of back-up sidearms.

As the Fifth Circuit Court of Appeals has held, "the right to defend oneself from deadly attack is fundamental."[123] A waiting period puts that fundamental right on hold.[124]

A person who is falsely imprisoned by the state can get out of jail a week later, with perhaps no permanent harm done. Newspapers which libel a person by mistake can always publish corrective stories the next day. A person who is denied the right to bear arms for a week may, at the end of the week, be dead. A deprivation of even 24 hours of the means to self-defense may mean a deprivation of life itself.

Of course the number of persons who would be killed or injured because of the waiting period would be small, so small as to be statistically unnoticeable. But so would the number of persons saved by a waiting period.

Proponents of a waiting period have not carried the burden of demonstrating that a waiting period would be a net saving of lives, taking into account the people who die because they cannot defend themselves, and taking into account the diversion of police resources away from street patrol.

To reduce the abuses and injuries that waiting periods could cause, a number of prophylactic measures make sense: Any waiting period should have an explicit appeals process. At the appeal, the government should have the burden of proving that the citizen is not entitled to possess a firearm. Normal rules of evidence should apply, and citizens should not be victimized by anonymous rumors and other sorts of hearsay evidence. Citizens who are victorious in their appeal should be entitled to attorney's fees.

Moreover, any person injured by the failure of police to properly and promptly approve an application should have a right to sue for damages. (When a person is killed because the police failed to act, the survivors would have the right to sue.)

Under the legal doctrine of sovereign immunity, the police have no duty to protect any individual citizen from crime, even if the citizen has received death threats and the police have negligently failed to provide protection.[125] In cases where the government affirmatively interferes with a person's ability to protect herself (the interval between an application to purchase a firearm and approval), the doctrine of sovereign immunity should not apply. The government should not be able to strip a person of her right to defend herself, and then assert that it has no responsibility for the consequences.

F. Financial hardships

Almost all waiting period/permission systems require the firearms purchaser to pay the entire cost of the system. It is Constitutionally odious to make people pay the government so the government can satisfy itself that they are fit to exercise their Constitutional rights. The young woman in the ghetto who needs an inexpensive handgun for self-defense, or the young man in Appalachia who wishes to hunt squirrel with a .22 rifle are not the cause of the crime problem. Even an $8 fee may drive the cost of their $50 gun out of reach.

For all firearms purchasers, not just poor people who need a defense gun, a waiting period requires an additional trip to the firearms store, more time spent by the clerk at the store, lost sales due to people who do not have the time to make repeated trips, and a host of other transaction costs. For a person who lives in a small town, and needs to make a long trip to get to a store with a good selection of merchandise, the inconvenience can be substantial.

The waiting period severely impacts firearms dealers and manufacturers. The reason is that most guns are bought by persons who already own guns, often as an impulse addition to a collection. If two trips to the store are required, the buyer often loses interest in the sale. For example, the number of handgun sale records reviewed by the Pennsylvania state police is one-third less than the number of handgun purchase applications. Most of the drop-off is caused by potential purchasers who, after a few days, decide not to buy the gun.[126]

The waiting period also indirectly impacts government resources. A substantial decline in firearms sales mean a substantial decline of several hundred million dollars in firearms excise taxes, and perhaps also a substantial decline in revenue for wildlife commissions.[127]

From a criminal justice standpoint, the loss of gun sales is inconsequential. The fact that a person who already legally owns three guns ends up not buying a fourth does not make him more vulnerable to crime, nor does it make him more dangerous to the public. (There is no correlation between gun density and gun crime.[128])

The loss in sales, irrelevant to the crime issue, is very harmful to retailers and manufacturers. Automobile dealers, liquor stores, and tobacco outlets all sell products that kill many people, but they are not burdened with a rule that makes lawful users make repeated trips for the same transaction.

It should be emphasized that substantial burdens on firearms owners and the firearms industry might well be justified if tangible benefits resulted. But as the evidence discussed above indicates, waiting periods simply do not prevent guns from coming into the wrong hands.

G. The data quality problem

The existing state of criminal records in most jurisdictions is simply too primitive to support a background check that is part of a waiting period (or part of an instant telephone check).

The FBI "estimates that approximately one-half of the arrest charges in their records do not show a final disposition."[129]

Only 40% to 60% of the nation's felony records are automated.[130] Many states do not have fully automated criminal records name indexes.[131] Many indexes are not currently searchable by information transmitted from the outside, such as telephone lines or computers. In some states, the same master index (such as a fingerprint index) that contains all felons will also include child care workers, various license holders, and firearms permit holders.[132]

For citizens regarding whom false information has been incorrectly recorded on a "rap" sheet, there is no remedy. Courts have held that even after an acquittal or dismissal of charges, a person has no Constitutional right to have an arrest purged from his record.[133] (It should be noted that racial minorities are disproportionately victimized by arrests that do not prove worthy of a conviction.)

According to the Department of Justice study, performing a reliable background check under current data quality conditions would take 30 days. The Department found that shorter background checks (such as one week or three weeks) were no more reliable than instant checks. That conclusion is consistent with opinion in the police surveys, which shows most command rank officers do not believe that seven days would give them enough time to do a background check.[134]

Because of the severe problems with the existing data quality, the Department of Justice Task Force concluded: "[A]pproximately 50% of the cases where persons appear to have a criminal history record based on an initial name search are eventually found to be false hits . . . Indeed, in many (perhaps most) cases an initial indication of a criminal record would eventually be shown to be untrue because it resulted from misidentification with someone else with a common name and date of birth." As a result, only 84–88% of gun purchasers would be able to pass an initial check.[135]

If there were a national comprehensive check, approximately 725,000 persons a year would be falsely denied under either the waiting period or the instant telephone check.[136] The 725,000 faced with false denials would then have to prove their innocence by being fingerprinted, and entered in a data base of eligible gun buyers. The "secondary verification process" (proving their noncriminal identity to the police) that would take four to six weeks.[137]

The list of people processed through secondary verification would be another basis for gun registration.

Accordingly, as minimum condition for any kind of background check system should include the establishment of a data base consisting only of convicted felons and other ineligibles.

H. A step towards prohibition

Why waiting periods? It is understandable why many legislators would be attracted to an idea that, at first glance, seems eminently plausible. Many legislators accept the reasoning "guns don't kill people; people kill people." So instead of controlling guns (through gun registration), why not control people who may abuse guns?[138]

But the anti-gun lobbies, being expert in the issue, know better. They know the facts of the Hinckley assassination. So why do they support a waiting period?

The National Coalition to Ban Handguns [recently renamed the Coalition Against Gun Violence] candidly admits that gun controls do nothing to prevent criminals from obtaining guns.[139] The CSGV believes that criminals are not the issue; handguns have no place in civilian hands. Moderate controls over handguns are a step toward to a ban. Policy statements distributed by the NCBH forthrightly admit as much.[140]

Even in the most academic settings, the question may come down to whether a person is "for" guns or "against" them. At a debate at the American Society of Criminology Conference in November 1989, the participants were asked what number of lives saved would be necessary for them to consider a waiting period worthwhile. Both sides of the debate agreed that the number of lives saved was not determinative of their positions. Dr. Paul Blackman, the National Rifle Association representative, replied that he thought the waiting period might end up with a net cost of lives. He also stated that alcohol prohibition had saved lives, but still was not a good idea. Darrel Stephens, Executive Director of the Police Executive Research Forum, replied that he would still favor a waiting period even if it were proven not to save any lives. He reasoned that the extra effort required to purchase a gun would convince some people not to buy a gun, and less guns in civilians hands would be good in itself.[141].

What about Handgun Control, Inc., the more powerful of the two major anti-gun lobbies? Their stated motto is merely "Keeping handguns out of the wrong hands." But their agenda is prohibition. HCI's former Chairman has stated that he favors intermediate control as a waystation to near-total handgun prohibition.[142] The organization supports handgun prohibition as a policy matter.[143] As one of HCI's Congressional allies acknowledges, the 7-day handgun wait "is not really enough, but it is a start."[144]

What good does a waiting period do for the goal of handgun prohibition? Waiting periods facilitate gun registration, which HCI praises as a prelude to gun prohibition.[145] The national waiting period proposal includes a number of subtle provisions which facilitate prohibition: an anti-gun police chief could indefinitely delay a purchase application by refusing to mail back acknowledgement of receipt of the application; and the definition of "handgun" is elastic enough to include a number of long guns.[146]

As discussed above, waiting periods sharply reduce gun sales. While there are no anti-

crime benefits, HCI sees reduced sales (rather than just reducing uncontrolled sales) as good in itself, and a necessary precondition to prohibition.[147]

Most importantly, the waiting period is social conditioning. It sends the message that citizens do not possess a right to bear arms, but merely a privilege dependent on police permission.[148]

VII. CONSTITUTIONAL ISSUES

Synopsis: Waiting periods are a prior restraint on the exercise of Constitutional rights. The very point of basic rights like free speech, or free exercise of religion, or the right to keep and bear arms, is that a citizen does not need to ask for government approval to exercise those rights. Waiting periods, because of their inefficacy and potential for abuse, are not the least restrictive means of attacking gun crime without interfering with the right to bear arms. A federal waiting period violates the 10th Amendment by forcing state officials to perform background checks.

Is a federal waiting period Constitutional? The issue has never been directly tested in court. State waiting periods are common, but the prevalence of a practice is no guarantee of its Constitutionality. Racial segregation, after all, was the norm in most of the U.S. for the century after the Civil War, even though the Constitution forbade it.

One view of Constitutional interpretation was articulated by Justice Black. He viewed the Constitutional prohibitions literally. For example, he took the First Amendment's command "Congress shall make no law respecting the freedom of speech . . ." to mean that Congress could pass no law regarding free speech. Justice Black viewed the Second Amendment with a similar literalness: "Its prohibition is absolute."[149] The more prevalent view, however, is that no Constitutional provision is absolute.

Regardless of which view is adopted, the most appropriate guide for analysis of the Second Amendment is the First Amendment. Of the entire Bill of Rights, only the First, Second, and Third Amendments guarantee particular substantive rights.[150] Amendments Four through Eight are due process requirements for the government to obey, while Amendments Nine and Ten are nonspecific reservations of rights. The Supreme Court has indicated that the First and Second Amendments should be interpreted according to the same principles.[151] Indeed, it is necessary to interpret the Second Amendment with just as much vigor as the First in order to obey the Court's command that all Constitutional rights must be treated with equal respect, with no right being particularly favored or disfavored.[152] And of course all Constitutional rights must be broadly construed.[153]

A. Prior restraints on constitutional rights

While the First Amendment protects freedom of speech, there are legitimate debates about what kinds of communication are considered "speech." Pornography, picketing, price-fixing, and perjury are activities which, at least arguably, are not included within the freedom of speech. Likewise, the right to bear "arms" is sometimes said not to apply to machine guns, nunchakus, brass knuckles, switchblades, or antiaircraft rockets.

For communication that is clearly within the freedom of speech (such as political commentary), the single clearest principle is that prior restraints are virtually never lawful. While the government (through laws against libel or against criminal incitement) may punish speech after it occurs, the government may almost never impose a prior restraint by requiring a person receive permission before speaking.[154]

The various police permission proposals destory the normal presumption of innocence and impose prior restraints. A person is forbidden to exercise her right to bear arms unless the police satisfy themselves that the person is not guilty.[155] Citizens who wish to protect themselves should not have to wait to receive police permission. The very point of basic rights like free speech, or free exercise of religion, or the right to keep and bear arms, is that a citizen does not need to ask for government approval to exercise those rights.[156]

A judicial decision permitting a prior restraint on the right to bear arms would inevitably endanger the right to abortion. If prior restraints and waiting periods on the right to bear arms are allowed, why not require women who need an abortion to submit to a waiting period, pass a simple test on the nature of fetal life and risks of abortion, and obtain permission from a local health agency?

The chance that any given person acquiring gun by any method, including by theft, will perpetrate a homicide is 1 in 3,000. In future years, a legislature dominated by pro-life forces could point out that a woman seeking an abortion does so with the intention of killing the fetus. If a chance of a killing smaller than 1 in 300 justifies a prior restraint, then surely the uncertainty of a killing in case of abortion would also justify a prior restraint.

B. Balancing tests

Another principle, originally developed under First Amendment analysis, but now considered to have general applicability, is that of "least restrictive means." When the government regulates Constitutionally-protected activity (such as speech or interstate commerce), even if the government is pursuing a substantial purpose: "that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in light of less drastic means for achieving the same basic purpose."[157]

Courts have directly applied the principle to strike down infringements on the right to keep and bear arms.[158]

Because a waiting period is so patently ineffective, it is not the least restrictive means to achieve the substantial government interest in reducing a gun misuse. The waiting period fails the less restrictive means test because it imposes a broad restriction on all firearms purchases (or all handgun purchases for a limited wait) that is not narrowly tailored. There are a large number of less restrictive methods the government might adopt, discussed below in Part VIII, to reduce gun misuse.

C. Federalism

Handgun Control, Inc. claims that 22 states have waiting periods. The statement is not completely accurate. The majority of American states impose no major restrictions on firearms purchases in addition to those under existing federal law. Federal law requires the purchaser of any gun to fill out a form which is permanently retained by the dealer, and is available for inspection by federal authorities. Some states require handgun purchasers (or all gun owners) to obtain a license. Once granted a license, the license holder may obtain an unlimited number of firearms of all types without further approval, for as long as the license is valid (for life, or a term of one or more years).[159] South Carolina runs a background check after the person has picked up the gun.[160] Wisconsin has a two day waiting period, but no background check.[161]

Only 16 states actually have a system like what is proposed by Handgun Control, Inc. as a federal law, and pushed by HCI in the state legislatures: a statute requiring individual police permission for every single handgun purchase. In four of those states (Pennsylvania, Oregon, Indiana, and Washington), a person who holds a permit to carry a concealed firearm is exempt from the waiting period; the police are statutorily required to grant concealed carry permits to all citizens unless there is a particular legal disability. Connecticut exempts from its wait anyone with a state hunting or local gun license, and allows transfers in less than 14 days if approval is granted earlier.[162] Tennessee also allows an instant transaction if the police approve, and in some rural counties, the waiting period is not enforced. Of the 12 states that require handgun purchasers to receive individual permission for each purchase under all circumstances, 3 have a waiting period shorter than the 7-day standard commonly proposed.[163] Thus, the 7-day waiting period for every handgun purchased proposed by Handgun Control is more severe than the existing laws in 41 of the 50 states.

Forty-one of the fifty states have decided not to implement laws as severe as the proposed uniform 7-day wait. Sometimes the federal government, viewing a growing trend in the states, makes the progressive state legislation into federal law. It cannot be said that there is a national trend in favor of waiting periods. It is true that some states that already had waiting periods for handguns have extended them to long guns.[164] (The move is logical, since long guns, especially shotguns, are so much deadlier than handguns.)[165] Similarly, Florida, which already allowed counties to have limited 3-day waiting periods, voted in November 1990 to make the wait statewide. The new Florida law had several provisions which made it more palatable to supporters of the right to bear arms; the law provides for a wait only, with no background check or police permission. Persons with handgun carry permits (which are required by law to be issued to all qualified applicants) are exempt from the wait. As a state constitutional amendment, the Florida wait prevents the state legislature from enacting stricter gun laws.

In states that do not already have waiting periods, there has been no willingness to adopt one. In the last decade, not one state without a waiting period has added one. Even Ohio, the home state of both sponsors of the federal waiting period, has repeatedly rejected a waiting period.[166] Indeed, the large majority of states, through preemption laws, have forbidden or abolished local waiting periods.[167]

It is sometimes asserted that the lack of a waiting period in some states makes enforcement of the law impossible in states that have one.[168] But ever since the Federal Gun Control Act of 1968, citizens are only permitted to buy handguns in the state where they reside. If a Marylander wished to evade his state's 7-day wait, and buy in a state without a wait (such as West Virginia), he could not do so without providing proof that he was a resident of the other state. Only persons possessing false identification could evade the background check in one state.

When faced with the federalism argument, some supporters of a national waiting period

reply that the proposals merely allow the choice of a background check. States already have that choice, of course, The state legislature of Iowa could enact a background check if it wished; it does not need the assistance of the federal government to have a "choice." Besides, as discussed above, Handgun Control, Inc. has already announced it will sue police departments that do not "choose" to conduct a background check. Because of HCI's lawsuit strategy, the seven-day wait would in practice be mandatory—even though the large majority of states have apparently decided that public safety is enhanced if their citizens can acquire the means of self-defense in less than a week.

Since the net effect of Handgun Control's strategy would be to impose on state officials a federal obligation to conduct a background check, the national waiting period is an unconstitutional exercise of Congressional power. As the Supreme Court has ruled: "the Federal Government, under the Constitution, has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it; for if it possessed this power, it might overload the officer with duties that would fill up all his time, and disable him from performing his obligations to the State, and might impose on him duties of a character incompatible with the rank and dignity to which he was elevated by the State."[169]

The Supreme Court's concerns are particularly apt in the case of the national background check. The mandatory check would require each state to assign some number of police officers or other employees (ranging from a few dozen in a small state doing a retail handgun-only check to several hundred in a large state under HCI's comprehensive check) to the job of checking the backgrounds of its citizens. Although the state legislature would have preferred to devote the time of its employees to the more urgent task of fighting criminals, the federal government would force the state to use its own resources to process paperwork from honest citizens.

The national waiting period violates, at the very least, the spirit of the Tenth Amendment.[170]

VIII. ALTERNATIVES

Synopsis: There a number of alternatives that—while clearly superior to the waiting period—do not represent good policy choices in themselves. The Instant Telephone Check and the 7 day waiting period/background check both use the same (often inaccurate) database; the Instant Check has the obvious advantage of being speedy, and not interfering with expeditious acquisition of a self-defense gun. Firearms Owners Identification Cards take a long time to obtain initially, and serve as a basis for gun-owner registration and overly broad fingerprinting of the general population. Turning drivers licenses into "smart cards" also requires citizens to submit fingerprints to the government in order to exercise their Constitutional rights. The most effective way to deal with criminals possessing guns is to better enforce laws regarding criminal gun acuisition and to target the black market trade that supplies the gigantic majority of criminal guns. Researchers from the National Institute of Justice have suggested several possibilities to directly attack the black market; none of the NIJ proposals interferes with Constitutional rights.

Henny Youngman was once asked how he liked his wife. "Compared to what?" he replied. There are a number of alternative controls on retail gun sales that, compared to a waiting period, are quite attractive.

If the only issue to be decided is what kinds of restrictive controls on retail gun sales are best, all of the alternatives detailed below compare favorably to the waiting period. They are just as effective at stopping legal purchases by ineligible buyers as a waiting period would be. Because the alternatives do not give the abusive administrators an easy opportunity maliciously to block every retail transaction, these alternatives are much less likely to result in wholesale denials of the right to bear arms, and hence less likely to threaten public safety. At the same time, they consume police resources at a rate equal to or significantly less than the rate at which a waiting period would consume police resources. Hence, the alternatives are clearly superior to a waiting period from all perspectives.

On the other hand, if the question is not how to further restrict retail gun sales, but instead if any such restrictions would be worthwhile, none of the alternative controls appear satisfactory. Like a waiting period, the alternative controls on legitimate sales can be evaded, and will likely do virtually nothing to disarm criminals. And while the alternative controls are not as dangerous to civil liberties as is a waiting period, the alternatives still pose some danger.

The most effective way to promote public safety and preserve civil liberties is to crack down on the black market that supplies criminal guns. A number of approaches for attacking the black market are suggested below.

A. "Instant" checks

One alternative to waiting periods is an "instant telephone check." The first state to enact such a check was Virginia; and Florida and Delaware have recently followed suit. When a Virginia gun dealer sells any handgun or certain long guns to a Virginia resident, the dealer calls a toll-free number at state police headquarters, to verify that the purchaser has no legal disqualification. If everything proceeds properly, the sale can be consummated with no more delay than a credit card check might entail.

Support of an instant check is widespread. Criminologists and legal scholars such as Gary Kleck, Don Kates, and Robert Cottrol who are generally skeptical of gun prohibition support the instant check system. Even big-city police chiefs who generally agree with Handgun Control, Inc., split from that group in preferring the instant check over a national firearms identification card.[171] The National Rifle Association also supported the instant telephone check in Virginia.

In terms of sorting out ineligible buyers, the instant check is just as effective as a 7-day waiting period, according to the Department of Justice Task Force, and for that reason is supported by Attorney General.[172] Unfortunately, in terms of preventing incorrect denials of the right to bear arms, the instant check is just as bad as the waiting period. Because the data quality for instant checks is, according to the Task Force, equivalent to that for a one or three week background check, only 84%-88% of applicants will be initially allowed to purchase if there were a national instant check. The unlucky remainder must go through a secondary verification process (such as submitting fingerprints at state police headquarters) that would take several weeks.[173]

Of course a criminal can evade an "instant" check just as easily as he can evade any other check. All he needs is a fake driver's license with another name. Since false social security and alien registration cards may sometimes be bought for as little as $35,[174] and since those cards are usually sufficient to obtain a driver's license, the instant check is likely to be just as porous as longer checks. The instant check, therefore, like the waiting period, could be evaded by anyone with false identification.[175]

For the purchasers who are rejected initially, fingerprint checks might be required to verify their identity. It is estimated that, if the instant check were national and comprehensive, the FBI would need 395 new clerical employees and 8,000 more square feet of office space to process the fingerprint work.[176] Given the limited efficacy of any police permission system, it might be considered whether 395 additional FBI employees might be better employed at projects focused on criminals, rather than on law-abiding citizens.

An instant check will cost between $7.07 and $9.39 per purchase.[177] For a person buying a high-quality target pistol, the cost is hardly noticeable. For a poor person buying a $40 used revolver for self-defense, the cost is considerable. The cost could be justifiable, if it yielded important benefits.

Significantly, the instant check is subject to the same problem of creating a gun and gun-owner registration system as is a waiting period. As the Task Force observes, "Any system that requires a criminal history record check prior to purchase of a firearm creates the potential for the automated tracking of individuals who seek to purchase firearms."[178] If a transaction number must be placed on the dealer gun sale form (to prove he made the check), and if the state retains its own record of transaction numbers, the record-keeping could easily be perverted into gun registration.

At the least, any instant check system should include protections to absolutely bar gun-owner record retention, and should specify that if computer or other failure prevents the police from approving the sale, the sale should be delayed no more than 24 hours.

The instant check is clearly preferable to a waiting period. The instant check uses the same criminal/mental data base as would a waiting period, and would therefore be equally effective in denying ineligible buyers. Because the large majority of sales would be approved on the spot, abusive administrators would have much less of an opportunity to interfere with the right to bear arms. It is true that an instant check eliminates the "cooling off" feature of a waiting period; but as discussed above, the number of crimes that could be prevented by "cooling off" is very, very small. The loss to public safety from the elimination of the "cooling off" period is more than offset by allowing persons who need a gun for immediate self-defense to get one, and by substantially reducing the numbers of arbitrary denials of firearms purchases.

B. Firearms owners identification cards

One suggested alternative to waiting periods for each firearm purchase is the creation of a Firearm Owners Identification Card (FOID). A person applies once for FOID card and submits her fingerprints to the authorities; after a four to six week review process, the person is granted a card which allows her to make unlimited purchases, with no further approval, as long as the card remains valid. (The card might expire after one year, or three years, or be valid for life). Massachusetts and Illinois are among the states currently using a FOID system. Faced with the choice between the instant telephone check and the FOID card, Handgun Control, Inc. prefers the FOID card.[179]

The Task Force suggests that each FOID card would cost $30. Approximately 1,700 new FBI employees would be required to process the necessary fingerprint checks of FBI files. According to the Task Force, the FOID card, taking up to six weeks to process, would be substantially more accurate than an instant check or a short waiting period.

As with the instant check or the waiting period, the list of FOID owners would be a de facto registration list of gun owners. The more serious civil liberties problem, however, involves massive fingerprinting.

The National Association of Police Organizations favors the collection of fingerprints of gun owners as the first step towards a comprehensive fingerprint system: "Hence the development of such an integrated national fingerprint system should be considered not merely for its benefits in connection with felon identification concerning firearms purchases but also in connection with improving law enforcement in general."[180]

The American Civil Liberties Union states "limited criminal history record checks, with fingerprint cards, are justified in certain licensing and employment situations. However, we oppose routine fingerprinting of all individuals who seek to buy firearms as an intrusion into privacy that cannot be justified by the minuscule benefit that may be achieved * * *.[181] Of course, the ACLU's principle should also apply not only to proposed national fingerprinting proposals, but also to the current practice in states such as New York and Illinois which routinely fingerprint the large fraction of the population which exercises its right to bear arms.

The same arguments that lead one to reject a national or identity card apply to federal gun licensing through a FOID. A national licensing system would require the collection of dossiers on half the households in the United States (or a quarter, for handgun-only record-keeping).

Implementing national gun licensing would make introduction of a national identity card more likely. Assuming that a large proportion of American families would become accustomed to the government collecting extensive data about them, they would probably not oppose making everyone else go through the same procedures for a national identity card.

Although the problem of illegal immigration is immense, Congress has repeatedly rejected calls for a national ID card. The same reasons that impelled Congress to reject that national ID card should impel Congress (and the states) to reject large steps towards such a card.

C. Smart cards

Another suggestion for screening of firearms purchasers has been the development of "smart" cards. As the Task Force explains, "every adult would carry an identification card issued by the state of residence, such as a driver's license, that would have electronically imprinted identifying information."[182] An instant fingerprint check in gun stores will within a few years be technologically feasible.[183]

The Smart Card seems to pose no serious problems from a pure Second Amendment viewpoint. There would be no false denials, since the cardholder would not be confused with other people with similar names and birth dates. There would be hardly any delays in purchases, since almost everyone would have a smart card.[184] There would be less risk of creating a gun registration system, although some states would be tempted to include gun registration data directly on the smart card.

Nevertheless, civil libertarians (including those with no interest in the gun issue) should oppose the smart card for the same reason that they oppose a firearms owners identification card (FOID). Both smart and FOID cards are a huge step towards a national identity card. Smart/FOID cards would of course be introduced with the assurance that they would only be used for limited purposes. But the Social Security Number, it was promised, would only be used for Social Security; today, the SSN is in effect a mandatory universal identification number, demanded by all levels of government and by businesses.

The National Rifle Association rejects the idea that persons who fill out the federal gun purchase form (form 4473) should be required to affix a fingerprint: "Exercise of a constitutional right cannot be conditioned on making fingerprints available to the police.[185] Indeed, the Supreme Court has held that Constitution forbids states to collect fingerprints of people merely because they exercise their Constitutional rights.[186] But the smart card requires a citizen to offer his fingerprint for government approval before exercising his right to bear arms.

The instant driver's license fingerprint scan offers few anti-crime advantages over the instant telephone check. Both can be evaded with false identification. (In the case of the fingerprint scan, the criminal just make sure to have someone else's print placed on his fake driver's license.[187] The instant fingerprint scan proposal would result in every state having a fingerprint of all of its adult citizens. It is questionable whether states currently ought to be fingerprinting citizens who obtain drivers' licenses. It is repugnant to federalism to force states to erode the privacy of their citizens by forcing the states to collect fingerprints.

Like the FOID card, the smart card looks handsome when compared to the waiting period, since it is more effective in denying ineligible buyer, and is less suspectible to repeated abuse by anti-gun administrators. But standing on its own, the smart card fails important civil liberties tests.

D. Anti-crime alternatives that do not infringe civil liberties

If the goal is really to keep felons from obtaining guns (rather than imposing gun control on honest citizens for its own sake), then the focus on retail sales is entirely misplaced. Hardly any felons buy crime guns in stores; almost all of the guns come from the underground market. A system aimed at disarming criminals should aim primarily at the black market.

The National Institute of Justice authors, Wright and Rossi, suggest "stiff penalties for firearms transfers to felons whenever these were detected and, in the same framework, stiff penalties for the crime of gun theft."[188] Enhanced penalties for transfers to felons were added to federal law in 1986, and should be added to state laws as well. To assist prosecutions of gun theft, states should follow Virginia's lead, and make sale of a stolen firearm a special, serious offense.[189] In many states, the theft and sale of $75 gun amounts to only petty larceny. Selling a "hot" $75 pistol should be a more serious offense than selling a "hot" $75 toaster-oven.

Other ways to keep criminals away from guns include closer monitoring of parolees and probationers, and more intensive crackdowns on fencing operations for stolen firearms. State of federal strike forces aimed directly at gun-runners might be introduced or augmented. To deal with the rare cases of criminals with non-false identification buying guns at retail, police departments could distribute wanted posters and/or gun felon lists to gun stores.[190]

Funding for any of the above programs should come from the same general revenues that support all law enforcement, or from a special assessment on convicted gun felons.[191] Persons exercising their Constitutional right to bear arms should not be forced to pay a special tax to support enforcement efforts against gun criminals, any more than camera owners or magazine readers should be taxed to pay for enforcement of child pornography laws.

IX. CONCLUSION

One night a man was walking down the street, and saw his friend crawling on the sidewalk, near a lamppost. The friend explained that he was looking for his wallet. The man got down on his knees, and helped the friend look. After about 15 minutes, the man said "I don't think your wallet is anyplace near this lamppost."

"Of course it isn't," the friend replied. "It fell out of my pocket over there, in that dark alley."

"Then why are you looking all the way over here, by the lamppost?" the man asked.

"Because the light is so much better over here."

Where should police officers look for armed criminals? In the dark alleys and black markets where criminals sell guns? Or behind a desk, where the light is better, so they can examine paperwork filled out by law-abiding citizens?

Especially when a legislature is considering laws that impact fundamental rights, it is improper to pass legislation simply because "it might help a little" or "it won't do much harm." Proponents of a new law have the burden of proving that their new law will accomplish a significant positive good. The burden is all the higher when proposed legislation affects a significant number of people, and waiting periods regulate the 50% of American households that choose to possess firearms. Proponents of a waiting period have failed to carry their burden of persuasion.

The criminological evidence is solidly against the waiting period. Most police do not favor the waiting period, and even if they did, their opinions do not over-ride Constitutional commands. While the Constitutional question is not at all well-settled, analysis of core Constitutional principles suggests that a waiting period cannot pass muster under the bar on prior restraints or the requirement of "least restrictive means."

Of all the proposals for increased restrictions on retail firearms sales, the waiting period scores last in terms of disarming criminals, and first in terms of threatening the exercise of the right to bear arms. Alternative restrictions share many of the waiting period's defects. At the federal level, all of the proposals violate the spirit of the Tenth Amendment guaranteeing state autonomy. All of the proposals facilitate gun registration. All of the proposals force a citizen wishing to exercise her right to bear arms to receive, at least once, permission from the government. The waiting period gives abusive administrators a chance to interfere with every firearms transaction, while the alternatives allow interference with some transactions. In terms of fighting crime, all of the proposals are essentially trivial. They will force police officers to carry out a surveillance of ordinary citizens that will almost never result in the arrest of a criminal.

The strongest evidence against a waiting period comes from the copywriters of Handgun Control, Inc., the lead proponent of the bill. They have chosen to build their case on a misrepresentation—the empirically false claim that a waiting period would have stopped John Hinckley. If Handgun Control, Inc.'s most compelling argument is false, why should legisators or other citizens believe HCI's other assertions? Why should the public accept controls like waiting periods which are designed as intermediate steps toward prohibition? Why should Americans accept alternatives like instant telephone checks or smart cards which—although better in every respect than waiting periods—fail to eliminate the civil liberties problem created by forcing people to risk being put on a government list because they exercise their rights.

The premise of the waiting period—and of most suggested alternatives—is that citizens can be required to ask police permission before exercising their rights. But the Constitution does not create a privilege to possess sporting guns. The Constitution recognizes a fundamental human right to keep and bear arms.[192] And that is why waiting periods, besides being ineffective, are illegal and immoral.

FOOTNOTES

[1] "Sarah Brady said Pascoe's bill is 'everything on my wish list that I've been wishing for a federal level.'" Gary Massaro, "Bradys Appeal for Gun Control," *Rocky Mountain News*, Jan. 26, 1990.

[2] Senate Bill 90-93, Colorado Senate, 57th General Assembly, Second Regular Session (1990).

[3] Mrs. Brady quoted in Sam Meddis, "Petitioners Taking Aim at Gun Laws," *USA Today*, July 20, 1988.

[4] Mrs. Sarah Brady, Testimony before House of Representative Judiciary Committee, Oct. 28, 1985, quoted in *Congressional Record*, Feb. 5, 1987, p. S.792.

[5] James Brady, Fund-raising letter for Handgun Control, Inc., "Wednesday morning" (summer 1990), p. 1: "John Hinckley—a man with a history of mental problems—purchased an easily concealed handgun." Most recipients of the fund-raising letter are not aware, as Mr. Brady surely must be, that no background check could have discovered Hinckley's entirely private record of consultation with mental therapists. The fund-raising letter, which includes substantial portions of Mr. Brady's standard testimony before Congressional committees, is hereinafter cited as James Brady Fund-raising letter.

[6] Hinckley transcript, pp. 1489-1559; Opposition to Defendant's Motion for Bail. He also forfeited the guns he had been attempting to carry onto the plane.

[7] Texas driver's license #9457099, issued to John W. Hinckley, Jr., 1612 Avenue Y, Lubbock, Texas. Hinckley trial pp. 1751-52.

[8] Sarah Brady, "How to Deter Future Hinckleys," *New York Times*, Nov. 8, 1985. Also: Barbara Lautman, HCI Communications Director, "Only the Criminals Are Hurt By Waiting," *USA Today*, May 26, 1987, p. 12A; Handgun Control, Inc., "Briefing Paper on the Brady Amendment" (1988): "Had a waiting period been in effect and a background check undertaken, it could have been determined that Hinckley committed a felony by lying about his address on the federal forms and he could have been stopped." Ohio Senator Metzenbaum (the lead Senate sponsor of the waiting period) claims that Hinckley submitted "a defective driver's license." Sen. Metzenbaum, *Congressional Record*, Feb. 4, 1987, p. S792.

[9] Advertisement, "A $29 handgun shattered my family's life." *The New Republic*, July 18, 1988, inside front cover. Also, same advertisement, *New York Times*, August 1, 1988, p. 1. Rep. Edward Feighan (House sponsor of waiting period), "Feighan Introduces Bill to Deter Criminals and Save Lives," Press Release, February 4, 1987: "One check would have told a Texas dealer that John Hinckley was using a false address and could have prevented him from purchasing a handgun."

[10] Mrs. Sarah Brady, Congressional testimony, quoted in "Flagship Bill Introduced," *Washington Report* (Handgun Control, Inc. newsletter), Spring 1987, pp. 1-2.

[11] "Brady Backs a Wait on Handgun Sales," *USA Today*, June 17, 1987, p. 2A.

[12] Advertisement, "A $29 handgun shattered my family's life." *The New Republic*, July 18, 1988, inside front cover. Also, same advertisement, *New York Times*, August 1, 1988, p. 1.

[13] Southwestern Bell, *Lubbock-Slaton Telephone Directory* (November 1979) (listing "John W. Hinckley . . . 409 University Av.").

[14] 18 United States Code §522(a)(6).

[15] ATF Rul. 80-21, reprinted in Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *(Your Guide to) Federal Firearms Regulation 1988-89*, ATF P 5300.4 (6-88), p. 73.

[16] Rep. James Sensenbrenner, Jr. (R-Wisc.), "Fact Verus Fiction on the Brady Amendment," August 11, 1988 (part of "Dear Colleague" letter titled "NRA Shoots Self in Foot"), p. 2.

[17] Shots from a .38 caliber are almost twice as likely to kill as .22 calibre attacks. Franklin Zimiring, *The Medium is the Message: Firearms Caliber as a Determinant of Death from Assault*, 1 Journal of Legal Studies 97 (Jan. 1972).

The campaign Mrs. Brady and HCI wage against "Saturday Night Specials" (cheap handguns like the RG 22) is particularly odd in light of the fact that Hinckley owned guns more powerful than a "Saturday Night Special," and had a ban on "Saturday Night Specials" been in effect, Hinckley would not have been able to buy the cheap handguns in Texas, and probably would have used the higher-quality (and deadlier) handguns.

[18] Advertisement, "A $29 handgun shattered my family's life," *The New Republic*, July 18, 1988, inside front cover. Same advertisement, *New York Times*, August 1, 1988, p. 1. See also James Brady Fund-raising letter, p. 1: "That shot—from a $29 Saturday Night Special—changed my life . . ." Also, Sarah Brady: "Nine years ago, I got thrown into the issue when John Hinckley bought a $29 handgun in Dallas," in Peter Nye, "National Gun-Control Position," *The National Voter* (League of Women Voters), October/November 1990, p. 5.

[19] "Gun Used to Shoot Reagan called a $47 'Saturday Night Special'," *Baltimore Sun*, March 31, 1981 (reporting testimony of federal agents based on their examination of the purchase record for the transaction involving Hinckley). See also, Pete Earley, "The Gun: A Saturday Night Special From Miami," *Washington Post*, March 31, 1981: "When model RG14 finally reaches the public, its price tag is about $47.50—one of the cheapest pistols available." (article about model of gun used by Hinckley).

[20] Mrs. Brady also offers diverse stories about her own involvement in the anti-gun crusade. In a November 1985 *New York Times* op-ed, she explained her involvement as directly triggered by NRA's attempt to repeal federal gun control through the McClure-Volkmer bill:

"*Last July*, the Senate passed the McClure-Volkmer bill, which would make it even easier for the kind of tragedy that struck down my husband to happen again. This bill would severely undermine federal gun laws by allowing anyone to buy a handgun across state lines, by limiting Government inspections of gun dealers' records and by repealing certain handgun record-keeping requirements. *I decided I had to do more than think about the problem.*"

Sarah Brady, "How to Deter Future Hinckleys," *New York Times*, Nov. 8, 1985 (emphasis added).

"As a *New York Times* reporter described it:

"*Mrs. Brady first enlisted in the fight for gun control in the summer of 1985* when it appeared that the Senate was about to adopt a measure backed by the NRA that was designed to weaken the 1968 Gun Control-Act."

"It just enraged me," she recalled of the effort to alter the comprehensive law.

Barbara Bamarekian, "Fighting the Fight on Gun Control," *New York Times*, Feb. 10, 1987, p. B10.

"But another newspaper states that Mrs. Brady has actually been an anti-gun activist since 1973, not since 1985, as she twice claimed in the *New York Times*." According to a *USA Today* profile, "Sarah Brady has spent nearly a third of her life arguing for tougher gun laws . . . Brady, daughter of an FBI agent, *began her fight for stronger gun laws in 1973*, when she tried to ban Saturday Night Specials . . ." "Brady Backs a Wait on Handgun Sales," *USA Today*, June 17, 1987, p. 2A (emphasis added).

"In light of Mrs. Brady's deceptions about matters large and small, her attack on the NRA, 'I think they tend to prevaricate quite often' seems a case of the pot calling the kettle black. ABC News/Time Forum, January 24, 1990, show #ABC-11, transcript."

"It is also ironic that she congratulates herself: 'I have tried very hard not to make it an emotional issue because I think that is what the gun lobby has done.'" *New York Times*, Feb. 10, 1987. A reader of Handgun Control's late 1990 fund-raising letter might find the rhetoric somewhat emotional.

"[Y]ou are at risk. You are in danger of also becoming a victim of the senseless handgun violence . . . [S]top our insane national handgun war . . . Frankly, what makes me livid is that the NRA opposes the Brady Bill because they claim it's an inconvenience . . . For their convenience, I experience pain—sometimes so intense I cry . . . I need help getting out of bed, help taking a shower, help getting dressed and, damn it, even help going to the bathroom . . . The NRA lobbyists can go to hell! . . . [T]he NRA lobbyists scream FOUL! . . .But the mightly NRA roars NO! And the cowards in Congress cringe! . . . . I desperately need your help. James Brady Fund-raising letter (emphasis in original).

[21] For example, Hank Johnson, Executive Editor, "Making a Case for Gun Control," *Athens Daily News* (Georgia), September 16, 1990 ("Had such a waiting period been in effect when John Hinckley walked into a Dallas pawn shop . . . he could have been stopped.")

[22] Sarah Brady, Vice Chair, Handgun Control, Inc., Statement (press release), February 4, 1987, p. 1. Presumably she meant to say "1980."

[23] Handgun Control, Inc., "Briefing Paper on the Brady Amendment" (1988); Rep. Feighan (sponsor of waiting period), remarks, *Congressional Record*, September 15, 1988, p. H7636.

[24] The National Sheriffs Association, which currently supports the waiting period, certainly qualifies as a major law enforcement organization, since it is the largest group of sheriffs in the United States. Interestingly Handgun Control, Inc. claimed in 1988 to have the support of "every major law enforcement organization," even though in 1988 the NSA had voted not to support a waiting period. Apparently when the NSA later changed its mind and supported Handgun Control, the NSA then qualified as a "major police organizations."

Both NACOP and AFP are for-profit organizations, and are associated with retired police chief Gerald Arenberg, who is also associated with other for-profit organizations. Handgun Control, Inc., sometimes announces this fact as if it somehow delegitimizes the NACOP and AFP—although the more than 100,000 law enforcement officers who have joined these organizations apparently do not agree. Perhaps no major law enforcement organization has been more tainted by financial impropriety than has the International Association of Chiefs of Police, a strong supporter of the waiting period; the questionable financial practices of IACP's former leadership should certainly not disqualify it as a voice for its members. *A fortiori*, the for-profit status of NACOP and AFP, untainted by any hint of scandal, should not disqualify these groups as police voices.

[25] The Federal Law Enforcement Officers Association, Fraternal Order of Police, International Brotherhood of Police Officers, International Association of Chiefs of Police, Major Cities Chief Administrators, National Association of Police Organizations, National Organization of Black Law Enforcement Executives, National Sheriffs Association, National Troopers Coalition, Police Executive Research Forum, Police Foundation (a think-tank), and Police Management Association. *Congressional Record*, Sept. 15, 1988, p. H7639; Handgun Control, Inc., "Briefing Paper on the Brady Bill," p. 2.

[26] "What PERF Members Think About Police Education, Assault Weapons, Toy Guns, Etc." *Subject to Debate* (PERF newsletter) March/April 1989, p. 1. It cannot be said that PERF has done an outstanding job of informing its members of the technicalities of the firearms debate. Ninety-four percent of PERF members favored a ban on nondetectable weapons, apparently unaware of testimony from the Bureau of Alcohol, Tobacco and Firearms and from the Federal Aviation Administration that there was no such thing as an undetectable weapon currently in existence or technologically feasible in the foreseeable future.

[27] National Association of Chiefs of Police, "American Law Officers Survey for 1989." The NACOP survey was sent to 16,259 command officers, and 16% responded. The 16% represented departments which employ 172,355 officers.

Both the NACOP and the PERF surveys were conducted by mail, and response was voluntary. Because the surveys were not conducted by random sampling, it is not possible to assign a confidence interval to either survey. Accordingly, it is statistically possible that either or both of the surveys is not a correct measure of its population's opinion.

On the other hand, it seems very possible that both PERF and NACOP were accurate measures. The responses to other questions in the surveys revealed results that would be expected of the sample populations. The big-city chiefs (PERF), favored: educational requirements for entry-level police (77%); an "assault weapon" ban (76%); funds for drug research (85%); and collection of data on hate crimes (78%).

Likewise, the NACOP survey found results that are consistent with the expected conservative orientation of national police commanders as a whole: belief that the death penalty deters crime (93.8%); opposition to drug legalization (94.4%); belief that "the courts are too soft on criminals in general" (95.6%), and belief that their department was undermanned (87.3%).

In any case, it is doubtful that Handgun Control, Inc. would criticize the NACOP survey, since NACOP's survey methodology is the same as PERF's, and Handgun Control cites the PERF survey in its own informational literature. Handgun Control, Inc., "Waiting Periods Work."

[28] National Association of Chiefs of Police, "American Law Officers Survey for the Year 1990." The NACOP survey was sent to approximately 16,000 command officers, and 10% responded. See the previous endnote for caveats regarding the response rate.

[29] Hand Control, Inc. claims that the NRA has lost police allies because it has "gone off the deep end" by opposing reasonable gun controls. Interestingly, when HCI tried its "deep end" advertisement in *Police* magazine, the magazine received mail "unrivaled by any subject in the last two years," most of the writers "saying they didn't like the contents of the ad one bit." *Police*'s editor composed an editorial condemning Handgun Control Inc., defending the NRA, and warning that "HCI is trying to erode the Second Amendment." F. McKeen Thompson, "Readers Respond to HCI . . . And We Agree," *Police (The Law Officer's Magazine)*, vol. 11, no. 12 (December 1987). p. 4.

In any case, the NRA is not the only group to lose friends over its extreme stands. On most issues, the Fraternal Order of Police is a staunch ally of Handgun Control. (The FOP leadership switched sides on the gun debate in anger over the NRA's stand on armor-piercing bullets.) But when Handgun Control helped push the New Jersey legislature to enact a bizarre and overboard "assault weapon" ban (it even applied to BB guns), the local chapter of the Fraternal Order of Police strongly opposed the law. Apparently, the FOP did not agree with HCI that BB guns should be confiscated as assault weapons. Dewey R. Stokes, "Major Issues Face FOP," *National FOP Journal*, Summer 1990, p. 4 (describing FOP stand in New Jersey, and national FOP support for New Jersey's opposition).

[30] Regarding the criminal procedure amendments to the Constitution, only a small percent of cases are not prosecuted or are reduced to lesser charges because of the rules against illegally seized physical evidence and coerced confessions. Peter F. Nardulli, "The Societal Cost of the Exclusionary Rule: An Empirical Assessment," 1983 *American Bar Foundation Research Journal* (1983): 585–610; Thomas Y. Davies, "A Hard Look at What We Know (and Still Need to Learn) about the 'Costs' of the Exclusionary Rule: The NIJ Study and Other Studies of 'Lost' Arrests," 1983 *American Bar Foundation Research Journal* (1983): 611–90; "Legal Safeguards Don't Hamper Crime-Fighting," *National Law Journal*, December 12, 1988, p.5.: Six-tenths of one percent to 2.35% of cases are dismissed because of bad searches; in a survey of prosecutors, 87% said that 5% or less of their cases were dismissed because of Miranda problems.

[31] See for example the remarks of Rep. Mel Levine (D-Calif.), *Congressional Record*, April 10, 1986, p. H1746 (allowing interstate transportation of handguns for sporting purposes will cause "mayhem . . . on our streets . . . and further handicap law enforcement efforts to control handgun crime."); remarks of Rep. Howard Wolpe (D-Mich), ibid. ("[T]he police in my district are concerned that the Volkmer substitute would add considerably more peril to their job than already exists.")

[32] "91% of Americans Favor Brady Amendment," *Subject to Debate*, Nov./Dec. 1988, p. 10.

[33] *Subject to Debate*.

[34] Polling data from Herber McClosky & Alida Brill, *Dimensions of Tolerance: What Americans Believe About Civil Liberties*. (New York: Russell Sage Foundation, 1988).

[35] "It established some rights of the individual as unalienable and which consequently, no majority has a right to deprive them of." Albert Gallatin, Congressional and Cabinet officer of the early American Republic, quoted in Richard E. Gardiner, "To Preserve Liberty: A Look at the Right to Keep and Bear Arms," 10 *Northern Kentucky Law Review* 63, 79n. (1982).

[36] McCloskey and Brill.

[37] Wright, Rossi, and Daly, pp. 223–35.

[38] Sarah Brady, Fund-raising letter for Handgun Control, Inc., "Wednesday," (no date, 1988).

[39] Matthew DeZee, "Gun Control Legislation: Impact and Ideology," *Law & Policy Quarterly* 5 (July 1983): 363–79. Although DeZee stated that he supported stricter gun laws, he did not offer any proposals.

[40] "Homicides, Robberies and States 'Cooling-Off' Schemes," in ed. Donald B. Kates, *Why Handgun Bans Can't Work* (Bellevue, Wash: Second Amendment Foundation, 1982), pp. 101–12.

[41] "An Empirical Analysis of Federal and State Firearms Control Laws," in *Firearms and Violence; Issues of Public Policy* (Cambridge, Mass.: Ballinger, 1984): 225–58 (the study also found no perceptible impact on crime or gun acquisition from the federal Gun Control Act of 1968).

[42] *Report on the Federal Firearm Owners Protection Act*, S. Rep. no 3476, 97th Cong., 2d sess. (1982), pp. 51–52.

[43] Philip. J. Cook & James Blose, "State Programs for Screening Handgun Buyers," *Annals of the American Academy of Political Science* 455 (May 1981), pp. 88–90. Although skepitcal about screening systems as a panacea, Cook and Blose still favor screening since it might increase the marginal price or time needed to obtain a gun for inexperienced criminals (such as teenagers), and might keep weakly-motivated criminals from obtaining guns at all. *Ibid.*, pp. 90–91.

Although Cook and Blose do not offer evidence, their intuition about possible benefits is not implausible. But since waiting periods and other screening systems do not show any statistical effect, it must be that the number of criminals actually affected is fairly small. Parts IV and V below discuss how the potential benefits of a waiting period compare to the potential harms.

One study I have cited in earlier works (Cato Institute and Senate Testimony, both 1988) for the inefficacy of gun control is Douglas Murray, (1975). My citation to Murray was an error. As Wright, Rossi, and Daly point out, Murray's statistical model has a design flow which minimizes any possible relationship between gun laws and gun crime.

[44] Assistant Attorney General John R. Bolton, Letter to House Judiciary Chairman Peter Rodino, March 19, 1986.

[45] James Wright, Peter Rossi, and Kathleen Daly, *Under the Gun: Weapons, Crime and Violence in America* (Hawthorne, N.Y.: Aldine, 1983).

[46] James Wright and Peter Rossi *Armed and Considered Dangerous: A Survey of Felons and Their Firearms* (New York: Aldine, 1986). Three-fifths of the prisoners studied said that a criminal would not attack a potential victim who was known to be armed. Two-fifths of them had decided not to commit a crime because they thought the victim might have a gun. Criminals in states with higher civilian gun ownership rates worried the most about armed victims.

[47] *The Armed Criminal in America*, p. 46 (report to National Institute of Justice; later republished as *Armed and Considered Dangerous)*.

One of the authors, Professor James Wright, nevertheless sees little disadvantage in a waiting period. He calls it "a reasonable precaution" and argues "Few legitimate purposes to which a firearm might be put are thwarted if the user has to wait a few days, or even a few weeks, between filing the application and actually acquiring the weapon." James D. Wright, firearms chapter in ed. Joseph F. Sheley, *Criminology* (Wadsworth Pub., 1991), p. 442. Professor Wright's view seems to be that while the waiting period, like any screening system, might yield only small benefits, it is worthwhile because it exacts virtually no costs. The counterargument that the waiting period's small benefits are outweighed by the damage it does to public safety is discussed below. Professor Wright's assumption that a waiting period "leaves the legitimate user pretty much alone" is true in theory but not in fact; as detailed below, a waiting period can be and often is administratively abused and made into a prohibition.

[48] Wright & Rossi, pp. 181–87.

[49] Ibid, p. 188, n. 3.

[50] There is of course some value in keeping a criminal from obtaining a second gun or a better gun, but the process would be unlikely to stop a criminal from perpetrating a given armed crime.

[51] Bureau of Alcohol, Tobacco and Firearms, Assistant Director of Criminal Enforcement, Memorandum to Director, July 10, 1975 (Greenville survey; of 20,047 names submitted to FBI for record checks, 68 had felony convictions; of those, 41 had not been represented by counsel at their conviction or who committed crimes in the distant past; twenty-seven buyers were prosecuted) of the 1.3% of buyers selected for prosecution, .9% had non-violent felony convictions, and .4% had violent convictions). Bureau of Alcohol, Tobacco and Firearms, Assistant Director for Criminal Enforcement, memorandum to Director, May 8, 1975 (of 374 records checked, 39 were purchasers with felony records who were not appropriate for prosecution because of age or non-violent nature of felony; six purchasers were prosecuted).

[52] Douglas A. Blackmon, "Gun Sale Limits Don't Cut Crime, Experts Say," *Atlanta Journal & Constitution*, May 29, 1990, p. A–9. The number for previous years were: for 1981, 1365; for 1982, 1008; for 1983, 1148; for 1984, 1349; for 1985, 1413; for 1986, 1515. Anita Lagunas, Supervisor, Firearms Control Unit, California Attorney General, Letter to Richard Gardiner, National Rifle Association, March 23, 1987.

[53] California Board of Criminal Statistics, in Blackmon.

[54] William Davis, "Gun Law Backfires," *Los Angeles Daily News*, Mar. 4, 1991 (letter to the editor from law enforcement officer and licensed federal firearms dealer whose application was put on hold).

There are also reports that all "assault weapon" registrants have been placed in police computer lists of persons whose pose a special hazard. California's practice of enforcing its laws with special severity against persons who are especially law-abiding makes the registrants seem naive, and seems to vindicate the intuitive distrust of gun registration felt by most gun-owners.

[55] Handgun Control, Inc., "Briefing Paper."

[56] "Gun Control: It Threatens the Right People," *Tallahassee Democrat*, February 1, 1985 (In six months period since waiting period went into effect, 37 of 1,425 applicants were denied; of the 37, 14 were denied for "outstanding arrest records for traffic offenses and other misdemeanors).

[57] Handgun Control, Inc., "The Case for a Waiting Period."

[58] In response to a letter from the NRA requesting information about the Columbus waiting period, the police department analyzed its records and found that in the period January 1, 1985 through July 22, 1985, thirty of the 1,419 handgun purchase applications had been refused. Due to man-hour limitations, the department was not able to provide data for other periods. G.J. McCain, Major, Bureau of Support Services, Columbus Police Department, letter to Richard Gardiner, National Rifle Association, September 12, 1985. Of the 32 denials, seven were because of outstanding warrants, four were due to marijuana cases, three for other drug cases, thirteen were for felony convictions other than marijuana, and five were due to age.

[59] Bureau of Justice Statistics, *Identifying Persons, Other Than Felons, Ineligible to Purchase Firearms: A Feasibility Study* (May 1990) (report performed under contract by Enforth Corporation, Cambridge, Massachusetts), p. 25.

[60] Pete Shields, *Guns Don't Die—People Do* (New York: Arbor House, 1981), p. 83.

[61] Task Force, p. 86.

[62] David Bordua, "Operation and Effects of Firearms Owners Identification and Waiting Period Legislation in Illinois," (University of Illinois: unpublished paper, 1985).

[63] Sgt. R.G. Pepersack, Sr., Maryland State Police, Commander, Firearms License Section, written testimony and oral questioning before United States Senate Committee on the Judiciary, Subcommittee on the Constitution, regarding S. 466, "Handgun Violence Prevention Act," June 16, 1987 (In 1986, there were 20,704 applications, 1,102 initial disapprovals, 370 approvals granted upon appeal, and 14 currently active cases involving an applicant who had a conviction of a crime of violence, of which 5 or 6 had been selected for prosecution for attempting an illegal purchase.)

[64] Pepersack, p. 2 (of 471 appellants in 1986, 370[78%] were ultimately approved).

Because so many initial denials are overturned, it is misleading for Handgun Control, Inc. to characterize the entire total of initial denials as "people who were trying to purchase handguns illegally." "The Case for a Waiting Period."

[65] "The Case for a Waiting Period." Also, "Flagship Bill Introduced," *Washington Report* (Handgun Control, Inc. newsletter), Spring 1987, p. 1.

[66] From 1966 (when current controls were enacted) until June 1988, there were 1,153,400 applications for either a permit to purchase a handgun or a firearms identification card. Of those applications, 28,850 (2.5%) were denied. According to reporter Eugene Kiley, of the *Bergen Record*, the state police conducted a random survey of 507 applicants in 1985. Applying the percentages from the 1985 survey to the data as a whole leads to the following breakdowns for the denials:

Reason	Percent	Number
Criminal Record	29	8,366
Falsifying Application	35	10,097
Public Health, Safety and Welfare	20	5,770
Mental or Alcoholic	7	2,020
Insufficient Reason to Issue	6	1,731

In other words, the total denials for actual danger (8,366 criminal record, plus 2,020 mental or alcoholic=10,386) uncomfortably close to the number of denials for patently arbitrary reasons (5,770 public health, plus 1,731 insufficient reason=7,501). If the denials based on falsifying application (10,097) are also considered arbitrary (since the category does not include falsifications relating to criminal, mental, or alcoholic ineligibility), the number of arbitrary denials significantly exceeds the number of legitimate denials.

[67] Ibid.

[68] Statement of Robert F. Mackinnon, on behalf of the Coalition of New Jersey Sportsmen, before the House Committee on the Judiciary, on *Legislation to Modify the 1968 Gun Control Act*, part 2, serial no. 131, 99th Congress, 1st and 2nd sess., Feb. 27, 1986 (Washington: Government Printing Office, 1987), p. 1418.

For example of the New Jersey law in operation, see W. Peter Haas, Chairman, Public Safety Committee, Borough of Mountain Lakes, letter to Police Chief Joseph Spinozzi, July 29, 1968 ("it is my opinion that you as Chief of Police of our Borough deny any applications for any type of weapons permits. You may accept the application and fully process that application to the point of approval or disapproval, then disapprove and notify the applicant of your decision and their recourse through the County Court . . . Article 4 Section 2A: 151-33 (d) . . . authorizes the disapproval of any person where the issuance would not be in the public interest of welfare. It is my belief that it is not in the public interest to issue permits . . .")

[69] Each application takes about four hours to process. Colonel Clinton Pagano, testimony before the New Jersey Assembly and Public Safety Committee, hearing on a. 594, February 1988. If one assumes that each man hour costs the state of New Jersey ten dollars, the licensing system has cost New Jersey $46,136,000. (The figure is in 1988 dollars, and based on the figure of 1,153,400 total applications in 1966–88, cited in the previous endnote.) There have been 10,386 denials based on criminal, mental, or alcohol records (see previous endnote), and dividing that number into the total dollar cost yields the cost per denial of $4,442.13.

[70] The dealer must report the sale to local police within 6 hours. The police have 48 hours to veto the sale, but in practice dealers generally wait 72 hours, to be sure to avoid liability for a sale in an ineligible person. Weekends and holidays do not count for purposes of the 48 hour computation.

Police believe that the law requires all private transfers to be routed through retail dealers, so that police can perform the check, but the requirement, if it exists, is widely ignored.

All information regarding Pennsylvania comes from the author's August 28, 1990 telephone conversation with Ms. Sharon H. Crawford, head of the state police firearms unit, in Harrisburg.

[71] A good number of "hits" are based on felony convictions from many years before, or on a conviction of aggravated assault, which some people (negligently) do not realize is a disqualifying felony.

[72] Task Force, p. 87.

[73] Blackmon.

[74] Task Force, p. 89.

[75] In Virginia, 8 of 673 ineligibles (1.2%) were arrested. Handgun Control, Inc., "The Case for a Waiting Period" (1990). See also the Maryland date discussed above.

[76] James Brady Fund-raising letter, p. 3: "Seven days to help police thwart a purchase by a drug dealer."

[77] As Sterling Johnson, New York City's former special narcotics prosecutor acknowledged, "You either have to protect yourself with a gun or get out of the [drug] business." Anthony M. DeStefano, "City Teens: Armed and Dangerous," *New York Newsday*, Sept. 24, 1990, p. 30.

[78] Blackmon.

[79] "Killer Fraternized with Men in Army Fatigues," *The Globe and Mail*, December 9, 1989; "Killer's Letter Blames Feminists," *The Globe and Mail*, December 8, 1989.

To be precise, Canada does not have a formal waiting period. In 1978, Canada implemented a national law which required police permission for every handgun purchase, and a one-time license (good for five years) for long gun purchases. The license application requirement served, in effect, as a waiting period for most first-time gun purchasers.

[80] Blackmon.

[81] James Brady Fund-raising letter.

[82] Elisabeth Scarff, Decision Dynamics Corporation, *Evaluation of the Canadian Gun Control Legislation* (Ottawa: Canadian Government Publishing Centre, 1983) (prepared for the Solicitor General of Canada), pp. 5, 29.

[83] A study of Toronto indicated that the gun laws decreased firearms suicide by men, but "the difference was apparently offset by an increase in suicide by leaping." Charles L. Rich, James G. Young, Richard C. Fowler, John Wagner, Nancy A. Black, "Guns and Suicide: Possible Effects of Some Specific Legislation," *American Journal of Psychiatry*, 147 (no. 3, March 1990), p. 342.

[84] World Health Organization, *World Health Statistics, 1984* (Geneva: W.H.O., 1984), pp. 183, 189; United States Bureaus of the Census, *Statistical Abstract of the United States, 1989* (Washington: Government Printing Office, 1989), p. 820.

[85] "Legislature: Pass Handgun Law," *Denver Post*, January 24, 1975.

[86] David Hardy, "Legal Restrictions on Firearms Ownership as an Answer to Violent Crime: What Was the Question?" *Hamline Law Review* 6 (July 1983): 404. It might be wondered if lives would be saved if homicidally enraged husbands "cooled off" while driving around at night look for open firearms dealers willing to sell to drunken and agitated customers, rather than staying home and finding alternative weapons.

[87] In a Detroit study, 75% of wives who shot and killed their husbands were legally defending themselves or their children against illegal attacks. The figure for Miami was 60%, and for Houston, 85.7%. "[W]hen women kill, their victims are . . . most typically men who have assaulted them." Martin Daly and Margo Wilson, *Homicide* (New York: Aldine, 1988), pp. 15, 200, 278.

Saunders, "When Battered Women Use Violence: Husband Abuse or Self-Defense," *Violence and Victims* 1 (1986), p. 49; Barnard et al., "Till Death Do Us Part: A Study of Spouse Murder," *Bulletin of the American Academy of Psych. and the Law* 10 (1982): 271; Donald T. Lunde, *Murder and Madness* (San Francisco: San Francisco Book Co., 1976), p. 10 (in 85% of decedent-precipitated interspousal homicides, the wife kills an abusing husband); E. Benedek, "Women and Homicide," in ed. Bruce Danto, *The Human Side of Homicide* (New York: Columbia, 1982).

It is sometimes suggested that the abused woman is to blame for not leaving the relationship. Many women do leave, only to be followed and killed by their former mate.

See generally Lenore E. Walker, *Terrifying Love: Why Battered Women Kill and How Society Responds* (New York: Harper and Row, 1989); Cynthia K. Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law* (Columbus: Ohio State University Press, 1989).

[88] Gary Kleck, *Guns and Violence* (Hawthorne, New York: Aldine, 1991, forthcoming) chapter 8. The study of 1982 data Kleck reviewed is Ted Mannelli, "Handgun Control," Report to the Executive Office of the Governor, State of Florida (Tallahassee: University of Florida, 1982) (unpublished).

[89] "Excerpts from Dinkin's Address: Mobilizing to Fight Crime," *New York Times*, October 3, 1990, p. B2.

[90] Eric Stenson, "Laws Limiting Access to Guns Putting Dent in NRA's Clout," *Asbury Park Press*, Aug. 5, 1990.

[91] 54 Fed. Reg. 43532.

[92] Task Force, p. 24.

[93] For example, the Lakewood, Colorado, police chief defended the Pascoe 21-day comprehensive wait: "If we can save one life, it's worth it." Also, Richard Boyd, President of Fraternal Order of Police, quoted in "Two Sides Spiritedly Debate Bill on Gun-purchase Waiting Period," *The Capital Times* (Madison, Wisc.), June 18, 1987; Rep. Edward Feighan (House sponsor of waiting period), "Feighan Introduced Bill to Deter Criminals and Save Lives," Press Release, February 4, 1987 ("If this bill can save even one life, which I know it can, Congress should act on it now."); Fraternal Order of Police: "If the seven-day waiting period will save just one life—the life of a law enforcement officer or a citizen—then [Congress'] work will be successful." quoted in Handgun Control, Inc., "Waiting Periods Work."

If the criteria for legislation is whether it will save a single life, legislatures would also want to consider a ban on new private swimming pools and on cigarette lighters, as well as a reduction of the speed limit to 15 m.p.h. There is of course no Constitutional right to swim or light fires or drive at a particular speed; and pools, cigarette lighters, and cars are not usually considered useful for self-defense. Cars kill many more people than guns. Cigarette lighters cause more fatal accidents for children than do guns. (In 1984, the number of accidental deaths from all types of guns for children under the age of 5 was 34, while the same year 90 children aged 0–4 were killed by cigarette lighters. Centers for Disease Control, "Mortality and Morbidity Weekly Report," March 11, 1988, p. 145; *Consumer's Research*, May 1988, p. 34.)

[94] Bureau of Alcohol, Tobacco and Firearms estimate cited in Task Force on Felon Identification System, *Report to the Attorney General on Systems for Identifying Felons Who Attempt to Purchase Firearms* (Washington: Department of Justice, October 1989), p. 34 [hereinafter "Task Force"].

The Task Force was chaired by Assistant Attorney General Richard B. Abell, and included the Bureau of Alcohol, Tobacco and Firearms; the Bureau of Justice Assistance; the Bureau of Justice Statistics; the Federal Bureau of Investigation; the Immigration and Naturalization Service; the National Institute of Justice; and the U.S. Marshals Service.

[95] The Current federal proposal applies only to retail handgun sales, reducing the number of transactions the police have to check down to "only" two and a half million. Since the anti-gun lobby has already pushed several states to include long guns in the waiting period, and pushed California to include even gifts between family members in the waiting period, it is appropriate to consider cost estimates for waiting period schemes on the ultimate system that will be implemented, rather than on what is proposed as a "first step."

One way to reduce the number of required checks by the police would be to exempt low-volume firearms dealers (50 or less sales per year) from the required check. Most such dealers sell only to persons they already know (such as members of their shooting club) and therefore, in effect, perform their own background check prior to sales.

The New York City system takes the equivalent of almost 100 full time personnel. Research Associates Inc., *A Preliminary Cost Analysis of Firarms Control Programs* (Silver Spring, Maryland: R.A.I., 1968), prepared for the National Commission on the Causes and Prevention of Violence, pp. 23, 27–28.

In Washington, D.C. the firearms ballistic lab is so underfinanced that it is nearly two years behind in providing ballistic anlaysis of firearms used in crimes. Sari Horwitz, "Caseload Weighs Down D.C.'s Ballistic Lab," *Washington Post*, March 8, 1989. Given that Washington, D.C. spends more per capita on police than any other city in the United States, and given the utter failure of the police department to meet even mininal standards in protecting public safety, it is disheartening to see Washington, D.C.'s current police chief spending his time lobbying for a national waiting period, which would impose significant manpower and paperwork costs on other police departments.

[96] The Department of Justice Task Force did not specifically analyze the cost of a 7-day waiting period, since the Task Force found that such a wait would be no more effective than an instant check. The Task Force did analzye the cost of a Firearms Owner Identification card, under which a card good for three years would be issued, allowing unlimited purchases after an initial background check lasting 30 days. Since the FOID system would not require repeated checks for the same person buying several guns, the FOID system would likely cost significantly less than a waiting period. The Task Force estimated the start-up cost of FOIDs at $148–153 millon, and the annual operating costs at $136–161 million. Task Force, p. 106.

The cost estimate makes the assumption that most jurisdictions would undertake the "voluntary" background check out of fear of being sued by HCI. If the check were truly voluntary and most police

departments declined to perform it, the additional costs of the law would be small.

In any case, the total costs of the "Brady Bill" are nowhere near the "billions" which the NRA cited as the upper cost range in its 1988 campaign against the bill. A figure of billions would only be justified only by combining the cost for several years of operation of the bill. A national check on every gun transfer, retail and private, long gun and handgun, might well cost billions. Even though the comprehensive billion-dollar check seems to be the long-term goal of Handgun Control, Inc., there is no current national proposal to that effect.

For an instant telephone check, the Virginia police had requested an $8 per transaction fee to cover costs. If costs in other jurisdictions are about the same, a national check for retail handgun sales would cost about $20 million ($8 × 2.5 million sales). A national check on all gun transfers would be about $60 million ($8 × 7.5 million transfers.)

[97] The cost anlaysis improves if one assumes that in addition to leading to the arrest of one criminal, the 10,000 background checks and cooling off periods prevented several people without criminal records from obtaining guns that they would have used in crime or a suicide attempt. See the discussion in Part III for the expected very small size of those groups.

[98] For example, David Seifman, "City's Latest Crime Shocker Fails to Stir Mayor's Anger," *New York Post*, Sept. 5, 1990, p. 4; Donatella Lorch, "Girl is Killed by Stray Bullet in Brooklyn," *New York Times*, Sept. 24, 1990, p. A1 (Although the newspapers did not report that the gun involved as a "bad" gun like a "Saturday Night Special" or an "assault weapon," the Mayor stated: "Her death leaves me griefstricken and outraged . . . at the failure of our state and federal governments to bring an end to the manufacture and distribution of these tools of death.") "Excerpts from Dinkins's Address: Mobilizing to Fight Crime," *New York Times*, Oct. 5, 1990, p. B2 (The speech concluded, "we ache for the protection that only a federal law can give us—the Brady Bill." He implored New Yorkers to call U.S. House Speaker Foley to demand passage of the "Brady Bill," which could save thousands of lives in its first year, including yours.")

[99] N.T. "Pete" Shields, fund-raising letter for Handgun Legal Action Fund, "confidential, Wednesday morning" (1988), See *Warren* v. *District of Columbia*, 444 A.2d 1 (D.C. App. 1981). Unfortunately, after police departments began complying with the paperwork rules, citizens who are victimized by crime will have no right to sue the police chiefs for putting their officers behind a desk, instead of on anti-crime patrol.

[100] Eileen Welsome, "Killing Spree Leads to Talk of Gun Control," *Albuquerque Tribune*, n.d; Shields, fundraising letter (1988), p. 3.

[101] "Background Checks Done Strictly by the Book," *San Diego Union*, February 21, 1990 ("We have an archive where we keep all those records, alphabetized by the gun owners' names," said Entricon. [Justice Department official]).

[102] The 1991 version of the national police permission bill, H.R. 7, explicitly states that it imposes no obligations on law enforcement officials. §(a)(2).

[103] *Puerto Rico* v. *Branstad*, 483 U.S. 219 (1987).

Of course Congress could compel destruction of registration records if it made a finding that gun registration violates the Second Amendment. Congress has the power under the section five of the Fourteenth Amendment to outlaw state violations of Constitutional rights. Logical consistency would mandate that the registration ban apply to other state and local gun registration as well.

[104] Registration is routinely flouted. In Illinois, for example, a 1977 study showed that compliance with handgun registration was only about 25 percent. Donald B. Kates, "Handgun Control: Prohibition Revisited," *Inquiry*, December 5, 1977, p. 20, n. 1. Compliance with retroactive registration of semiautomatics in Boston and Denver has been about 1%. About 10% of California's 300,000 "assault weapon" owners registered as required by law.

[105] Registration lists facilitated gun confiscation in Greece, Ireland, Jamaica, and Bermuda. B. Bruce-Briggs, "The Great American War," *The Public Interest*, (Fall 1976), p. 59; Kates, *Why Handguns Bans Can't Work*, p. 16.

The Washington, D.C., city council considered (but did not enact) a proposal to use registration lists to confiscate all shotguns and handguns in the city. When reminded that the registration plan had been enacted with the explicit promise to gun owners that it would not be used for confiscation, the confiscation's sponsor retorted, "Well, I never promised them anything!" "Wilson's Gun Proposal," *Washington Star-News*, February 15, 1975, p. A 12; Lawrence Francis, "Washington Report," *Guns & Ammo*, December 1976, p. 86.

The Evanston, Illinois, police department also attempted to use state registration lists to enforce a gun ban. Paul Blackman, "Civil Liberties and Gun-Law Enforcement: Some Implications of Expanding the Power of the Police to Enforce a 'Liberal' Victimless Crime," Paper presented at the annual meeting of the American Society of Criminology, Cincinnati, 1984, p. 14. In 1989, the Illinois Legislature considered a proposal to confiscate semi-automatics, using the existing gun registration forms to find out where to round up the guns.

When Illinois Firearms Owners Identification Cards were first issued, persons with felony convictions were eligible to possess a firearm if the conviction was more than 5 years in the past. Later, the Illinois legislature retroactively changed the bar date to 20 years. Registered owners who had a felony conviction more than 5 years old and less than 20 had their guns confiscated. Since there are always proposals to expand the class of prohibited persons (such as barring all persons with even single misdemeanor drug or violent offense, no matter how long ago), and always proposals to confiscate various lawfully-acquired types of weapons, many gun-owners are leery of being placed on any kind of government list—even if they are in full compliance with the (current) law.

For more on registration, see note 52 and accompanying text.

[106] The Supreme Court has ruled that the Constitution prohibits the government from registering purchasers of newspapers and magazines, even of foreign Communist propaganda. *Lamont, DBA Basic Pamphlets* v. *Postmaster General*, 381 U.S. 301 (1965). The U.S. Post Office intercepted "foreign Communist propaganda" before delivery, and required the addressees to sign a form before receiving the items. The Court's narrow holding was based on the principle that addressees should not have to go to the trouble of filling out a form to receive particular items of politically oriented mail. Since the Post Office had stopped maintaining lists of propaganda recipients before the case was heard, the Court did not specifically rule on the list-keeping practices. One may infer that the Post Office threw away its lists because it expected the Court would find them unconstitutional. See also *Thomas* v. *Collins*, 323 U.S. 516 (1944) (registration of labor organizers).

[107] 5 United States Code §552a(i)(1).

[108] Carl Ingram, "Gun Law Forces Mental Hospitals to Name Patients," *Los Angeles Times*, Feb. 7, 1991.

[109] For example, Arlington, Virginia, requires handgun applicants to "authorize a review and full disclosure of all arrest and medical psychiatric records." Form 2020-63 (Form 4/88).

[110] State of Illinois, Department of Public Safety, Firearm Owners Identification Application, question 9, FOID-1.

[111] State of New Jersey, "Application for Firearms Purchaser Identification Card," forms STS-3 (rev. 9-1-79).

[112] A number of studies have argued that former mental patients are no more prone to commit violent crimes than is the public as a whole. U.S. Senate Subcommittee on the Constitution, Judiciary Committee, "Hearings on the Constitutional Rights of the Mentally Ill," 91st Congress, 1st & 2d sessions (Washington: 1977), p. 277; B. Ennis, *Prisoners of Psychiatry* (1970), pp. vi, 225p G. Morris, "Criminality and the Right to Treatment," in *The Mentally Ill and the Right to Treatment* (1970), pp. 121-24; Livermore, Malmquist, & Meehl, "On the Justifications for Civil Commitment," 117 *University of Pennsylvania Law Review* 75, 83 n.22 (1969), all cited in David T. Hardy & John Stompoly, "Of Arms and the Law," 51 *Chicago-Kent Law Review* 62, 97 (1974).

Some studies have suggested that committal decisions are often unfair and incorrect. A. Wiley, "Rights of the Mentally Ill," p. 11; Ennis, p. vii.

[113] Rep. Marlenee, *Congressional Record*, Sept. 15, 1988, pp. H7643-44.

[114] For several months in 1970, the F.B.I. ran out of funds to process state requests for fingerprint checks. Some New Jersey chiefs of police stopped processing firearms permit applications, and told gun applicants to sue in court to obtain a license. J. Edgar Hoover, Director, Federal Bureau of Investigation, Letter to All Fingerprint Contributors, May 21, 1970; Joseph Santiago, "Chief Balks On Permits For Guns," *The Record*, July 10, 1970; John Spencer, "Registration of Guns Becomes Prohibition of Guns," (letter to the editor), *The Record*, n.d. (written Aug. 27, 1970).

[115] Testimony of Sergeant R.G. Pepersack, Md. St. Police Commander, Firearms Lic. Sect., before Subcomm. on the Const., June 16, 1987.

[116] Donald B. Kates, "On Reducing Violence or Liberty," *Civil Liberties Review*, (American Civil Liberties Union) August/September 1976, p. 56.

[117] Statement of Robert F. Mackinnon, on behalf of the Coalition of New Jersey Sportsmen, before the House Committee on the Judiciary, on *Legislation to Modify the 1968 Gun Control Act*, part 2, serial no. 131, 99th Congress, 1st and 2d sess., Feb. 27, 1986 (Washington, D.C.: Government Printing Office, 1987), p. 1418. According to the Department of Justice Task Force, the typical delay in New Jersey is 6 to 10 weeks. Task Force, p. 84.

[118] For a variety of cases of lawless enforcement of the gun laws, see *Motley* v. *Kellogg*, 409 N.E.2d 1207 (Ind. App. 1980) (police chief "denied members of the community the opportunity to obtain a gun permit and bear arms for their self-defense); *Schubert* v. *DeBard*, 398 N.E.2d 1339 (Ind. App. 1980) (police determination that self-defense did not constitute "good reason" for gun permit voided by court); *Buffa* v. *Police Dept. of Suffolk County*, 47 A.D.2d 841, 366 N.Y.S.2d 162 (2d Dept. 1975) (mere "withdrawal of police approval" was insufficient grounds to revoke license); *Storace* v. *Mariano*, 35 Conn. Sup. 28, 391, A.2d 1347, 1349 (1978) ("in my opinion, he is an unsuitable person to carry a gun" was not a suitable reason for denying a permit); *Salute* v. *Pitchess*, 61 Cal. App. 3d 557, 132 Cal. Rptr. 345, 347 (2d Dist. 1976) (sheriff's unilateral determination "that only selected public officials can show good cause for a permit" was illegal); *Schwanda* v. *Bonney*, 418 A.2d 163, 165 (Me. 1980) (voiding police effort to impose criteria not based on statute); *Iley* v. *Harris*, 345 So.2d 336, 337 (Fla. 1977).

[119] For some examples of the New York Police Department's flagrant abuse of the statutory licensing procedure, see: *Shapiro* v. *Cawley*, 46 A.D.2d 633, 634, 360 N.Y.S.2d 7, 8 (1st Dept. 1974) (ordering N.Y.C. Police Department to abandon illegal policy of requiring applicants for on-premises pistol license to demonstrate unique "need"); *Turner* v. *Codd*, 85 Misc. 2d 483, 484, 378 N.Y.S.2d 888, 889 (Special Term Part 1, N.Y. County, 1975) (ordering N.Y.C. Police Department to obey *Shapiro* decision); *Echtman* v. *Codd*, no. 4062-76 (N.Y. County) (class action lawsuit which finally forced Police Department to obey *Shapiro* decision).

Also: *Bomer* v. *Murphy*, no. 14606-71 (N.Y. County) (to compel Department to issue blank application forms for target shooting licenses); *Klapper* v. *Codd*, 78 Misc.2d 377, 356 N.Y.S.2d 431 (Sup. Ct., Spec. Term, N.Y. Cty.) (overturning refusal to issue license because applicant had changed jobs several times); *Castelli* v. *Cawley*, New York Law Journal, March 19, 1974, p. 2, col. 2 (Applicant suffered from post-nasal drip, and repeatedly cleared his throat during interview. His interviewer "diagnosed" a "nervous condition" and rejected the application. An appeals court overturned the decision, noting that the applicant's employment as a diamond cutter indicated "steady nerves.")

[120] Gary L. Wright, "Woman Won't Be Charged: Boyfriend's Slaying Ruled Self-Defense," *Charlotte Observer*, October 3, 1990.

[121] H.R. 7, §(a)(1)(B).

[122] Robert E. McSherly, Jr., letter to the Editor of *Orange County Register*, reprinted in Gun Owner's ACTION Committee, *We The People* (newsletter), September 1990, p. 7.

[123] *United States* v. *Panter*, 688 F.2d 268, 271 (5th Cir. 1982).

[124] Notably, many gun control activists do not consider self-defense legitimate. The United Methodist Church, which founded the National Coalition to Ban Handguns, and whose Washington office building also houses the NCBH, declares that people should submit to rape and robbery rather than endanger the criminal's life by shooting him. Methodist Board of Church and Society, "Handguns in the United States" (pamphlet); same statement in Rev. Brockway, "But the Bible Doesn't Mention Pistols," *Engage-Social Action Forum*, May 1977, pp. 39-40. The Presbyterian Church, another affiliate of the National Coalition to Ban Handguns, supports a complete ban on handguns because it opposes "the killing of anyone, anywhere, for any reason," including defense of others against a life-threatening attack. Rev. Young, Director of Criminal Justice Program for Presbyterian Church, testifying in 1985-6 Hearings on Legislation to Modify the 1968 Gun Control Act, House Judiciary Committee, Sub-

committee on Crime, vol. I, p. 128. The *Washington Post* condemns "the need that some homeowners and shopkeepers believe they have for weapons to defend themselves" as representing "the worst instincts in the human character," Editorial, "Guns and the Civilizing Process," *Washington Post*, September 26, 1972.

[125] See, for example, *Bowers* v. *DeVito* 686 F.2d 616 (7th Cir. 1982) (no federal Constitutional requirement that police provide protection); *Calogrides* v. *Mobile*, 475 So. 2d. 560 (Ala. 1985); Cal. Govt. Code §§845 (no liability for failure to provide police protection) and 846 (no liability for failure to arrest or to retain arrested person in custody); *Davidson* v. *Westminister*, 32 Cal.3d 197, 185 Cal. Rep. 252; 649 P.2d 894 (1982); *Stone* v. *State* 106 Cal.App.3d 924, 165 Cal. Rep. 339 (1980); *Morgan* v. *District of Columbia*, 468 A.2d 1306 (D.C.App. 1983); *Warren* v. *District of Columbia*, 444 A.2d 1 (D.C. App 1981); *Sapp* v. *Tallahassee*, 348 So.2d 363 (Fla. App. 1st Dist.), *cert. denied* 354 So.2d 985 (Fla. 1977); Ill. Rev. Stat. 4–102; *Keane* v. *Chicago*, 98 Ill. App.2d 460, 240 N.E.2d 321 (1st Dist. 1968); *Jamison* v. *Chicago*, 48 Ill. App. 3d 567 (1st Dist. 1977); *Simpson's Food Fair* v. *Evansville*, 272 N.E.2d 871 (Ind. App.); *Silver* v. *Minneapolis* 170 N.W.2d 206 (Minn. 1969); *Wuetrich* v. *Delia*, 155 N.J. Super. 324, 326, 382 A.2d 929, 930, *certif. denied* 77 N.J. 486, 391 A.2d 500 (1978); *Chapman* v. *Philadelphia*, 290 Pa. Super. 281, 434 A.2d 753 (Penn. 1981); *Morris* v. *Musser*, 84 Pa. Cmwth. 170, 478 A.2d 937 (1984).

The law in New York remains as decided by the Court of Appeals the 1959 case *Riss* v. *New York:* the government is not liable even for a grossly negligent failure to protect a crime victim. In the *Riss* case, a young woman telephoned the police and begged for help because her ex-boyfriend had repeatedly threatened "If I can't have you, no one else will have you, and when I get through with you, no-one else will want you." The day after she had pleaded for police protection, the ex-boyfriend threw lye in her face, blinding her in one eye, severly damaging the other, and permanently scarring her features. "What makes the City's position particularly difficult to understand," wrote a dissenting opinion, "is that, in conformity to the dictates of the law, Linda did not carry any weapon for self-defense. Thus, by a rather bitter irony she was required to rely for protection on the City of New York which now denies all responsibility to her." *Riss* v. *New York*, 22 N.Y.2d 579, 293 N.Y.S.2d 897, 240 N.E.2d 806 (1958).

Ruth Brunell called the police on 20 different occasions to beg for protection from her husband. He was arrested only one time. One evening Mr. Brunell telephoned his wife and told he was coming over to kill her. When she called the police, they refused her request that they come to protect her. They told her to call back when he got there. Mr. Brunell stabbed his wife to death before she could call the police to tell them that he was there. The court held that the San Jose police were not liable for ignoring Mrs. Brunell's pleas for help. *Hartzler* v. *City of San Jose*, 46 Cal. App. 3d 6 (1st Dist. 1975). The year after wining the *Hartzler* case, the San Jose government appointed Joseph McNamara Police Chief. Chief McNamara has since become the leading police spokesman for HCI.

[126] The ⅓ figure comes from the author's conversion with Ms. Sherman, head of the Pennsylvania state police firearms unit, cited above. Part of the ⅓ drop-off may be caused by people who are disqualified by the local police background check, but (based on data from other states) ineligible buyers only account for, at most, a few percent of buyers. The rest of the ⅓ drop-off, therefore, is best explained by buyers changing their mind, as would buyers of virtually every product, if forced to make two trips for a single purchase.

[127] Research Associates, Inc., p. 34 (A firearms control program that substantially reduced gun sales would result in a tax revenue loss, in 1968 dollars, of over one hundred million dollars.)

[128] Gary Kleck, "The Relationship Between Gun Ownership Levels and Rates of Violence in the United States," in ed. Donald B. Kates *Firearms and Violence: Issues of Public Policy* (Cambridge, Mass.: Ballinger, 1984): 99–132.

[129] Task Force Draft, 54 Federal Register 43528, Oct. 25, 1989.

[130] Task Force, p. 10.

[131] Eleven states do not have automated records. Ten other states have less than 65% of their records automated. Task Force, p. 8.

[132] "Testimony of Gary L. Bush Chairman, Search Group, Inc., Before the Subcommittee on Crime of the House Judiciary Committee," January 25, 1990, p. 14.

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[155] Rep. Bosco derides the quaint notion that "gun purchasers in America should be considered innocent until they prove themselves guilty." *Congressional Record*, Sept. 15, 1988, p. H7651.

[156] The right to bear arms obviously includes the right to purchase them, just as the right to free speech includes the right to purchase printed matter.

[157] *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960). See also *Schneider* v. *State*, 308 U.S. 147, 161, 165 (1939); *American Communications Association* v. *Douds* 339 U.S. 382 (1950); *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U.S. 293 (1961); *NAACP* v. *Alabama*, 377 U.S. 288, 307–8 (1963); *Talley* v. *California*, 362 U.S. 60 (1960); *Dean Milk* v. *Madison*, 340 U.S. 349 (1951).

[158] "[T]he legitimate governmental purpose in regulating the right to bear arms cannot be pursued by means that broadly stifle the exercise of this right where the governmental purpose can be more narrowly achieved." *State ex rel. Princeton* v. *Buckner*, 377 S.E.2d 139, 144 (W.Va. 1988). See also *City of Lakewood* v. *Pillow*, 180 Colo. 20, 501 P.2d 744, 745 (Colo. 1972) (voiding ban on gun sales within city limits and a requirement that persons carrying firearms be licensed: "Even though the governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.")

[159] Some states with a license system are Indiana (license for handguns valid for 4 years); Iowa (handguns, 1 year); Massachusetts (all guns, lifetime); Minnesota (handguns, 1 year).

[160] Pennsylvania runs a state records check after the person picks up the handgun following a 48 hour wait. Task Force, pp. 82–83.

[161] Task Force, p. 83.

[162] Rep. Kennelly, *Congressional Record*, Sept. 15, 1988, p. H7650.

[163] The states with waiting periods for each handgun purchase are listed below. In some cases, the time period is not a minimum waiting period, but the maximum time the police are allowed to process an application for a permit to purchase a handgun [the time limits are not always observed, see Parts IV and V above]: Alabama (2 days); California (all guns, 15 days); Connecticut (all guns, 14 days); Hawaii (handguns, 15 days); Maryland (handguns and "assault weapons," 7 days); Michigan (handguns); Missouri (handguns, must issue within 7 days); New Jersey (all guns, 30 days); New York (handguns, 180 days); North Carolina (handguns, 30 days); Oregon (handguns, 15 days); Pennsylvania (handguns, 2 days); Rhode Island (all guns, 7 days); South Dakota (handguns, 2 days); Tennessee (handguns, 15 days); Washington (handguns, 5 days); Wisconsin (handguns, 2 days). *Identifying Persons, Other Than Felons*, p. 114, exhibit B.4 (and updated to account for 1990 changes in state laws).

[164] California and Rhode Island in 1990. Maryland extended its wait to "assault weapons" in 1989.

[165] "At close range, the shotgun is the most formidable and destructive of all arms . . . Unlike bullets, shotgun pellets rarely exit the body. Therefore, the kinetic energy of wounding in shotguns is usually equal to the striking energy . . . all the kinetic energy is transferred to the body as wounding effects." Vincent J.M. DiMaio, *Gunshot Wounds: Practical Aspects of Firearms, Ballistics, and Forensic Techniques* (New York: Elsevier, 1985), pp. 182–83.

"Shotgun injuries have not been compared with other bullet wounds of the abdomen as they are a thing apart . . . [A]t close range, they are as deadly as a cannon." R. Taylor, "Gunshot Wounds of the Abdomen," *Annals of Surgery* 177 (1973): 174–75.

[166] The lead sponsors are Rep. Feighan in the House and Sen. Metzenbaum in the Senate.

[167] Forty-one states have some form of preemption. Of the 41, 36 are by statute, and 5 by judicial decree. Some of the preemption states (such as Massachusetts) allow local gun controls if the state legislature approves them; some other preemption states (like Virginia) have grandfathered in restrictive local ordinances.

[168] Rep. Hoyer (Maryland), *Congressional Record*, Sept. 15, 1988, p. H7640.

[169] *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66, 107–8 (1860) (state official's refusal to deliver escaped slave under Federal Fugitive Slave Act).

[170] The Tenth Amendment reserves state authority regarding powers not delegated the federal government: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

[171] Members of the Police Executive Research Forum (a think-tank for major urban police chiefs) supported an instant check over a firearms license card by a margin of 49% to 46%. Task Force, p. 113; Police Executive Research Forum, Comments on Justice Department's "Draft Report on Systems for Identifying Felons Who Attempt to Purchase Firearms," July 26, 1989, p. 2.

[172] The Attorney General of the United States insists that any verification system for firearms purchasers be at the point of sale, without further delays; he reasons that any check that would be significantly more accurate would take a month, and "Such a delay would impose an unreasonable burden on legitimate gun purchasers." Richard Thornburgh, Attorney General, Letter to Dan Quayle, November 20, 1989, p. 2; *Identifying Persons, Other Than Felons*, p. 91.

[173] In Florida, where an instant check began a few weeks before the publication date of this monograph, a man was denied the right to purchase because the police computer located a 10-year-old outstanding bench warrant. The warrant turned out to be for a lawsuit involving a bad check; the man had never even been told that a lawsuit has been filed against him.

[174] "U.S.'s Barriers to Employment Are Not Stopping the Influx," *New York Times*, October 9, 1989, p. A13 (quoting I.N.S. assistant director for investigation for Los Angeles. Several illegal workers said that a good set of papers cost $300.)

[175] 54 Fed. Reg. 43537.

[176] Task Force, p. 40.

[177] Task Force, p. 39.

[178] 54 Fed. Reg. 43546.

[179] Handgun Control, Inc., letter to Walter Barbee, Office of the Assistant Attorney General, July 26, 1989.

[180] Comments to the Task Force.

[181] Comments to the Task Force.

[182] 54 Fed. Reg. 43530.

[183] William S. Sessions, FBI Director, "The FBI and the Challenges of the 21st Century," *FBI Law Enforcement Bulletin*, January 1989, p. 3 (near-term feasibility of instant fingerprint readers in police cars).

[184] People without driver's licenses or other official identification might face delays if such a card were mandatory for a purchase. Currently firearms dealers may sell to someone whose identity they have verified, and verification may include personal knowledge. Currently, a small dealer can sell to a friend even if the friend does not present official identification, since the dealer knows the purchaser's bona fides based on personal knowledge.

[185] National Rifle Association, "Comments of the National Rifle Association of America, Inc. on Draft Report of Identifying Felons Who Attempt to Purchase Firearms," (July 26 1989), p. 30.

[186] In *Schneider* v. *State*, 308 U.S. 147, 164 (1939), the Court voided a New Jersey Law requiring pamphleteers to undergo a "burdensome and inquisitorial examination, including photographing and fingerprinting." New Jersey, noted for its disdain of Second Amendment rights, apparently needs to be repeatedly reminded to obey the First Amendment as well. Despite the plain language of *Schneider*, a New Jersey township enacted a law requiring political canvassers to be finger printed. A federal appeals court found the fingerprinting, "stigmatizing, and an inappropriate burden on their right to do political work." *New Jersey Citizen Action* v. *Edison Township*, 797 F.2d 1250, 1262–65 (3d Cir. 1986), *cert. denied*, 479 U.S. 1103 (1987).

[187] As the Task force explained, "the biometric card does not solve the problem of individuals using fraudulent 'breeder' documents, such as birth certificates, to obtain the biometric ID card."

[188] Wright & Rossi, p. 191. The "McClure-Volkmer" firearms law reform in 1986 enhanced penalties for gun transfers to felons. 18 United States Code §922(d).

[189] Virginia Code §18.2.–108.1(1988).

[190] The measure would be Constitutional according to the principles of *Paul* v. *Davis*, 424 U.S. 693 (1976) (distribution of names and photos of "active shoplifters" to retail stores).

[191] 18 United States Code §3013.

[192] *United States* v. *Cruikshank*, 343 U.S. 542, 551–553 (1876). The Court stated that the rights to peaceably assemble and to keep and bear arms were not created by the Constitution, but merely recognized in

the document. Those rights, the Court said, were not dependent on the Constitution for their existence, but were found "wherever civilization exists."

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from Illinois.

Mr. DIXON. Mr. President, I want to thank my friend, the distinguished senior Senator from Idaho, for his usual courtesy. I appreciate very much his yielding the floor so I can have an opportunity to send an amendment to the desk that has been agreed to on both sides, Mr. President.

AMENDMENT NO. 435

(Purpose: To amend title 18 of the United States Code to punish as a Federal criminal offense the acts of international parental child kidnaping)

Mr. DIXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Under the previous order, the Senator from Illinois was to be recognized to offer an amendment. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DIXON], for himself and Mr. RIEGLE, proposes an amendment numbered 435.

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

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

The amendment is as follows:

At the end of the bill, add the following:

TITLE —INTERNATIONAL PARENTAL CHILD KIDNAPPING

SEC. 01. OFFENSE.

(a) AMENDMENT OF TITLE 18, UNITED STATES CODE.—(1) Chapter 55 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1204. International parental child kidnapping

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'child' means an individual under the age of sixteen at the time the offense occurred;

"(2) the term 'person' means a parent, putative parent, or family member related to the child victim by blood or marriage;

"(3) the term 'lawful custodian' means—

"(A) an individual or individuals granted legal custody or entitled to physical possession of a child pursuant to a court order; or

"(B) the mother of the child when the parents have not been married to each other, the father's paternity has not been established by a court of law, and no other individual has been granted custody of the child by a court of law;

"(b) Any person who—

"(1) intentionally removes a child from or conceals or detains a child outside the territorial jurisdiction of the United States—

"(A) without the consent of the individual who has been granted sole custody, care, possession, or guardianship of the child;

"(B) for more than 90 days without consent of the other joint custodial parent;

"(C) in violation of a valid court order which prohibits the removal of the child from a local jurisdiction, State, or the United States;

"(D) without the consent of the mother or lawful custodian of the child if the parents have never been married to each other and the father has never established paternity in a court of law;

"(E) during the pendency of a judicial proceeding affecting marriage, custody, or paternity, but prior to the issuance of a temporary or final order determining custody;

"(F) when the child was taken with physical force or the threat of physical force; or

"(G) if the parents of such child are or have been married to each other, or have never been married to each other, but paternity has been established by a court of law, and there has been no court order of custody, and conceals the child for fifteen days outside the jurisdiction of the United States, and fails to make reasonable attempts within the fifteen-day period to notify the other parent of the whereabouts of the child or to arrange reasonable visitation or contact with the child;

"(2) being a parent of the child, instructs another person to remove, conceal, or detain the child when that act when committed by the instructing parent would be a violation of this section; or

"(3) removes a child from or conceals or detains a child outside the territorial jurisdiction of the United States, for payment or promise of payment at the instruction of a person who has not been granted custody of the child by a court of law,

shall be guilty of child kidnapping and shall be fined in accordance with this title or imprisoned not more than three years, or both.

"(d) It shall be an affirmative defense under this section that—

"(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act and was in effect at the time of the offense;

"(2) the defendant was fleeing an incidence or pattern of domestic violence;

"(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

"(e) There is criminal jurisdiction over conduct prohibited by this section if any court in the United States has or could have jurisdiction to determine custody of the child subject to the prohibited conduct pursuant to the Uniform Child Custody Jurisdiction Act.".

(2) The table of sections for chapter 55 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1204. International parental child kidnapping.".

(b) INCREASED PENALTY.—Section 994 of title 28, United States Code, is amended by—

(1) redesignating subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x) as subsections (p), (q), (r), (s), (t), (u), (v), (w), (x), and (y), respectively; and

(2) inserting after subsection (n) the following new subsection:

"(o) The Commission shall ensure that the guidelines reflect the appropriateness of imposing a greater sentence than would otherwise be imposed for an offense under section 1204 of title 18, United States Code, if—

"(1) the defendant abused or neglected the kidnapped child during the removal, concealing, or detaining of the child or placed or caused the child to be placed in the care of another individual who abused or neglected the child;

"(2) the defendant inflicted or threatened to inflict physical harm on the child or on a parent or lawful custodian of the child with the intent to cause such parent or lawful custodian to discontinue criminal prosecution of the defendant under this section;

"(3) the defendant demanded payment in exchange for return of the kidnapped child or demanded that the defendant be relieved of the financial or legal obligation to support the child in exchange for return of the child; or

"(4) the defendant committed the offense while armed with a deadly weapon or the removal of the child resulted in serious bodily injury to another individual.".

SEC. 02. EFFECT OF PRIOR REMOVAL.

If a child was removed from the territorial jurisdiction of the United States prior to the date of enactment of this Act, charges under section 1204 of title 18, United States Code, as added by section 01, may be brought only in cases involving the concealing or detaining of the child in violation of a court order that was in effect at the time of the child's removal from the territorial jurisdiction of the United States.

SEC. 03. RELATION TO THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL PARENTAL CHILD ABDUCTION.

(a) RULE OF CONSTRUCTION.—None of the provisions of this title or amendments made by this title shall be construed to detract from the provisions of the Hague Convention on the Civil Aspects of International Parental Child Abduction, done at the The Hague on October 25, 1980.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that, inasmuch as use of the procedures under the Hague Convention on the Civil Aspects of International Parental Child Abduction has resulted in the return of many children, those procedures, in circumstances in which they are applicable, should be the option of first choice for a parent who seeks the return of a child who has been removed from the parent.

SEC. 04. AUTHORIZATION OF APPROPRIATIONS FOR TRAINING AND EDUCATIONAL PROGRAMS.

There is authorized to be appropriated $250,000 to conduct national, regional, and State training and education programs on criminal and civil aspects of international and interstate parental child abduction under the State Justice Institute Act of 1984 (42 U.S.C. 10701 et seq.).

Mr. DIXON. Mr. President, my amendment has been agreed to on both sides. It is essentially similar to S. 1236, the International Parental Kidnaping Act of 1991, closes a loophole in current Federal law which allows for the unabated kidnaping of America's children by their parents or legal guardians. This amendment tells America's parents that no longer is parentage an excuse for kidnaping their children.

Let us be frank about this crime, Mr. President. In most instances, the abducting parent is not acting in the best interests of the child. He or she is acting out against the other parent or legal custodian, and the child is used as a pawn. In those instances where a parent takes a child out of the country for legitimate purposes, or in compliance

with a valid court order of custody, there are affirmative defenses provided in the bill.

As the leader in the effort to protect America's children from international parental child abduction, I am committed to enacting legislation that will increase the likelihood that an abducted child will be returned to their left-behind parent.

One of the most effective means available to parents at this time is the Hague Convention on the Civil Aspects of International Parental Child Abduction, to which the United States became a party to in 1988. Some 20 countries have ratified the convention, and children are being returned under the provisions of the convention.

However, most nations of the world are not a party to the convention. More must and can be done to help resolve these situations. This amendment will help.

First, it will increase the possibility of extradition of an abducting parent, and at a minimum, increase our leverage for the return of the child in the face of an extradition proceeding.

At present, a left-behind parent can seek relief through the unlawful flight to avoid prosecution statute, otherwise known as a UFAP. However, according to the Department of Justice's comments on similar legislation in the 101st Congress, the UFAP "has been of limited effectiveness when the fugitive parent flees to a foreign country." Further, the Department of Justice states, "it is our understanding that the UFAP statute is not an extraditable offense under any existing treaty." A UFAP warrant will "rarely, if ever, provide a basis for compelling the return of a fugitive parent from abroad."

This amendment is also needed to deter future abductions. The Hague Convention, according to officials at the State Department, has served to deter abductions. There is every reason to believe criminal prosecutions of international parental child abduction will serve as a deterrent as well.

Last, this amendment will strengthen the hand of U.S. officials when working with foreign governments to seek the return of an abducted child. Unless the United States takes this crime seriously, and making this a Federal felony shows we do take it seriously, why should any other country take our pronouncements on the subject seriously? If we are serious about this doing all we can to get our abducted children back, then let us make the act of international parental child abduction a Federal felony.

Mr. President, in view of the fact that I apparently have a little time, I would like to share with my colleague in the chair, because he is a former distinguished attorney general in the State of Connecticut, a man that I hold in very high regard, the history of how I got into this.

Some years ago, a lady, who is a registered nurse in Cicero, IL, contacted me. She was married to a Saudi Arabian man from a family of stature in Saudi Arabia. In the course of that marriage, she had two lovely daughters. The gentleman was a man who drank excessively, beat her, beat the children. Ultimately, she obtained a divorce in the Circuit Court of Cook County, IL, in Chicago.

Now, both parties were served; both parties had lawyers.

Thereafter, she was reluctant to let the father visit with the two daughters because of his past performance and the fact that, when he was intoxicated, he would beat the children. But her lawyer advised her she must give him an opportunity for visitation. Being a decent, law-abiding citizen, she did. At the first opportunity, he took the two children out to O'Hare Airport and flew them to Saudi Arabia, where they remain to this day.

Mr. President, the outrageous nature of this situation is, I tell you with sincere regret, the Saudi Arabian Government gives women no standing in their courts. This poor woman has no redress in the courts of Saudi Arabia and no way to get these two daughters back. This Senator has spent years trying to influence the Saudi Arabian Embassy. I have met with their people in this country. They have had lawyers in my office discussing this with me. All through the experiences we have had, including this last Mideastern experience with Desert Storm, we have continued to try to get these two little girls back to their lawful, custodial mother in Cook County, IL, and throughout this terrible, agonizing experience for her she has been rejected at every turn.

When I first looked into this, I found, Mr. President, that the State Department, frankly, was not doing much to help. I put an amendment on a State Department authorization bill several years ago directing the State Department to do certain things. I am delighted to say that a good friend of mine at that time was in the State Department, in the Reagan administration, Ed Derwinski, who is now the distinguished Secretary of Veterans Affairs, who had served with me as a Republican member of the Illinois House years ago when I was a kid in the Illinois House, and served with great distinction, I think 20 years or more, as a U.S. Congressman from the southern area of Cook County and Will County, IL, in my State. He was kind enough to take it upon himself to help me with the State Department. We later met with folks there who finally developed a consensus for having a desk in every Embassy in the world where some individual would be the point person that folks having abducted children could talk to in any country in the world. That has helped a little bit, not much.

I was one of the major supporters of and made many speeches in this Chamber for The Hague Convention. That helped a little but not a lot. The problem is only about 20 countries belong to the Hague Convention. The Chair would know which ones they are: England, the United States, Canada, France, Germany—the countries you expect would belong.

The plain fact is in the Middle East when these problems occur, in most cases if women are parents of children and their husbands leave them and take the children, they have no standing in the courts in that part of the world. It is an outrage. There are 4,000 cases, Mr. President, in the United States of America of lawful custodial parents who have lost their children through illegal acts of abduction by the parent that was not entitled to custody.

Just the other day I had a call from Newsweek magazine, which apparently is doing an article on this, may I say, Mr. President. Do you know one of the things they are doing an article on? Do you know what has happened in this country? There is an industry down in either North or South Carolina, one of the Carolinas—I apologize; I cannot remember which one—where some form of delta force type officials have set up shop. What they will do for you, if you can afford it and you can pay the price, is go steal the child back, go into the foreign country fully armed to the teeth and in the dark of night kidnap back the child. That is the state of the international law in the world today. I think it is an outrage.

Now, somebody might say, well, it is not a very big problem. I know 4,000 people in a country of this size is not a very big number. I am going to tell you, Mr. President, if you have ever had a personal experience with one of those problems—and I know the Presiding Officer is a father himself, and I am a father three times and a grandfather seven times—there is no problem that will compare with the loss of a child and the grieving and the suffering that goes on as a consequence of it.

I do not know, Mr. President, to what extent this will solve the problem. This is the fourth time, may I say to the Presiding Officer, I have put this amendment on a major and practically important piece of legislation in the hopes that it would become the law.

I hope this crime bill is going to survive, Mr. President. I think this crime bill will be a survivor. We have accommodated the administration in almost every way, including habeas corpus, with the possible exception of the exclusionary rule, which has been improved some by the distinguished chairman of the committee and the senior Senator from Delaware. But I think we have a doggone good bill here that addresses crime in America. While there could be some differences of opin-

ion about what we are doing on guns, and this Senator certainly realizes that, basically we have a bill that the average American thinks ought to become law. So I hope that this amendment, which has been agreed to on both sides, will finally become law and 4,000 parents in America, who have been denied their own children that they were awarded legal custody of in the court, will finally have an opportunity, through the extradition process, this now elevating this situation to the crime of kidnaping, to obtain the restoration of their lawful custodial rights and the custody of their children.

Mr. President, I thank the chairman of the committee, the distinguished manager on this side, and I thank the ranking member and the distinguished manager on the other side for their cooperation and ask that we have a rollcall vote at this time on the adoption of my amendment.

The PRESIDING OFFICER (Mr. ROBB). Is there sufficient second?

There is not a sufficient second.

Mr. DIXON. I just want a vote, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Illinois.

The amendment (No. 435) was agreed to.

Mr. DIXON. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAHAM. 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. GRAHAM. Mr. President, at an appropriate time it will be my intention to offer an amendment which will take the form of a sense-of-the-Senate amendment, and in order to effectively use the time remaining I would like to make some comments about that proposal at this time.

Mr. President, in 1988 we considered the last major crime and antidrug bill. I offered an amendment to direct the General Accounting Office to review the issue of balance in the criminal justice system.

What does balance in the system mean? It means that there is a relationship among the various parts of the criminal justice system which must be synchronized if we are to accomplish the objective of deterrence, effectiveness, and judicial efficiency.

What is the criminal justice system made up of? You can think of it roughly in three parts; what I could call the beginning of the system, which is essentially those aspects that are responsible for attempting to deter crime, to investigate crime, to make arrests, and then to bring prosecution. The middle part of the system is the judicial system in which those prosecutions are heard. The end of the system is the consequences for those persons who have been subject to some legal sanction, whether it is probation, parole or incarceration.

If any one of those three parts of the system is imbalanced, for instance is inadequately supported, it will cause serious disruption in the rest of the system.

Today, we are particularly aware of the deficiencies at the end of the system. Virtually all of our States and the Federal penal system are woefully overcrowded; therefore resulting in such diverse circumstances as inmates receiving only a small fraction of the sentence to which they were referred, persons who under normal circumstances would have been incarcerated being released on probation or parole because of the inadequacies within the penal system.

Mr. President, I want to focus today on the middle part of the system, the courts.

The GAO report released in April of this year entitled "Criminal Federal Justice System, A Model to Estimate System Workload," is based on some of the work which has been done in the various States, including my State of Florida, to tempt to analyze through computer modeling what would be the implications of actions on one part of the criminal justice system, and on the balance of the system.

For instance, we know that if we add an additional 100 DEA agents, drug enforcement agency agents, they will make an additional number of arrests. The whole purpose of increasing the capacity at the front end of the system is to do a superior job in the investigation and in the arrest and subsequent prosecution function.

That increased capacity is going to then impact the middle part of the system, which is our Federal courts.

One of the most striking conclusions in this study, Mr. President, is the fact that as a result of what we have done recently in terms of increasing the front end of the system, including the ability to bring cases and prosecute cases to U.S. district attorneys' offices was 62,400. The estimate is that by the end of fiscal year 1992—that would be September 30, 1992, or 2 years later—that number will be reduced to 28,400.

We should take considerable pride in the fact that we have funded the front end of the system sufficiently to not only make a significantly larger number of cases, but to actually bring those cases to the courts. Where we should not be so happy, Mr. President, is what we have done to the middle part of the system. The same report indicates that as of October 1, 1990, there were 49,400 cases pending in our Federal district courts. All of these statistics refer exclusively to criminal cases.

But the projection is that by 2 years later, September 30, 1992, there will be 69,300 cases pending in the Federal district courts.

So we are constipating the criminal justice system in the middle section by the inadequacy of our Federal judicial system to be able to process the number of cases that the front end of the system is now developing.

I suggest that we are exacerbating that problem by what we are doing today, and we are doing this in a very noble cause. We want to strengthen the ability of Federal agencies in cooperation with State and local law enforcement agencies to better protect our people by being better able to deter, and when crime occurs, to investigate and make arrests and bring prosecutions.

We are, by the whole series of actions which we are taking here, substantially adding to the burden of the Federal district court.

I have a letter, which ask unanimous consent, Mr. President, to be printed in the RECORD, dated June 27, 1991, from the General Accounting Office, in which the GAO extrapolates on the analysis used in its April report against the original bill as reported by the Judiciary Committee.

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

GENERAL ACCOUNTING OFFICE,
Washington, DC, June 27, 1991.

Hon. BOB GRAHAM,
U.S. Senate.

DEAR SENATOR GRAHAM: As requested, we have used our federal criminal justice system model to estimate the national workload impact on the federal criminal justice system of enacting the budgetary increases provided by Title X of S. 1241, "The Violent Crime Control Act of 1991."

Title X would provide an additional $345.5 million to federal law enforcement agencies, U.S. Attorneys, the courts, and support agencies, such as the Marshals Service and Defenders Service for criminal law enforcement. These increases would be in addition to any other appropriations. Our workload estimates assume that these increases would be in addition to any increases included in the President's fiscal year 1992 budget request.

The bill includes an additional $100.5 million for the Drug Enforcement Administration; $98 million for the Federal Bureau of Investigation; $45 million for the Immigration and Naturalization Service; $15 million for the Bureau of Alcohol Tobacco and Firearms; $45 million for the U.S. Attorneys; $20 million for the federal courts; $12 million for the federal Defenders' Service; and $10 million for the Marshals Service.

The workload estimates provided below assume that existing investigative and prosecutorial priorities and policies will remain essentially unchanged.

The principal probable impact of enacting these budgetary increases would be to increase substantially an already growing backlog of criminal defendants in the federal courts. Our model estimates that the district court backlog could grow by about 29,000 defendants by the end of fiscal year 1992. Using the federal court's estimated overall average of 1.4 defendants per criminal case, this means an additional backlog of about 21,000 cases. (Drug cases average 1.9 defendants per case).

Overall, the proposed budgetary increases could result in about 6,000 more persons referred to the U.S. Attorneys for prosecution; an additional 29,000 persons indicted by the U.S. Attorneys (including persons already referred to the U.S. Attorneys, but against whom action has not yet been taken); and an increase of about 29,000 defendants pending in federal district courts at the end of 1992, for a total of about 98,000. Using the Defenders Service estimate that about 75 percent of all criminal defendants require a court-appointed attorney, an additional 22,000 persons could need such representation.

The principal constraint on the courts ability to deal with the increased workload is the number of available district court judges. Last year, Congress authorized an additional 74 district court judgeships for a total 649. The model's estimates are based on an Administrative Office projection that about 612 of these 649 positions will be filled in fiscal year 1992. Because it is not anticipated that enactment of this bill would lead to an increase in the number of judicial positions filled, the number of defendants the courts could handle would be expected to be about the same with or without the bill's passage.

Of course, judges could increase the number of criminal defendants adjudicated if they increase the proportion of their time devoted to criminal cases. Our model's estimates assume that nationally district court judges will continue to spend about 40 percent of their time on criminal cases. If judges increase the percentage of time devoted to criminal cases, it is likely to mean delays in civil cases. In some districts, judges already devote more than half their time to their criminal caseload.

Sincerely,

LOWELL DODGE,
Director, Administration of Justice Issues.

Mr. GRAHAM. Mr. President, just to quote a few sentences from this letter: It states that title X of this bill would provide an additional $345.5 million to Federal law enforcement agencies, U.S. attorneys, the courts, the support agencies such as Marshals Services and Defendant Services for criminal law enforcement. These increases would be in addition to any other appropriation.

The bill includes an additional $105 million for DEA, $98 million for the FBI, $45 million for Immigration and Naturalization, $15 million for the Bureau of Alcohol, Tobacco, and Firearms, $45 million for U.S. attorneys, $20 million for the Federal courts, $12 million for Federal Defenders' Services and $10 million for the Marshals Service.

The estimate is "the principal probable impact of enacting these budgetary increases would be to increase substantially an already growing backlog of criminal defendants in the Federal courts. Our model estimates that the district court backlog would grow by about 29,000 defendants by the end of the fiscal year 1992,"

As I indicated in my previous statement prior to this, we were estimating a backlog of 69,300. We are about to increase that by another 29,000.

What can we do? I would suggest that there have been two principal areas of concern relative to adequate capacity of our Federal district courts, Mr. President.

First, we have been creating Federal district courts on essentially a historical basis. The process is that the judicial conference, which is chaired by the chief justice and membered by Federal judges, looks at what has happened in the past in terms of the number of case files. Then it recommends, based on that historical information, what number of new Federal courts from the appellate to the district level should be created. That recommendation goes to the appropriate committees of the Congress, and through the legislative process those positions are eventually considered, and possibly created.

The difficulty with this is that our actions, in creating additional crimes, increasing capacity to enforce those crimes, is causing an avalanche against the Federal district courts, which that retroactive analysis is never going to close.

We will never be able to make up the backlog, as long as we are proceeding in that manner. And so the sense-of-the-Senate proposal that I intend to offer would state that it is the sense of the Senate that the Judicial Conference should be encouraged to no longer rely solely on historical data to make its recommendations to Congress for additional judgeships, but should also utilize a workload model program designed to anticipate increased criminal violence resulting from no increased funding in one important component of the Federal court justice system and to take into account the time expended in the appointment and confirmation process.

It is that second item which represents the other part of our cause of this problem. During the current administration, it has taken an average of 502 days from the time of judgeship becomes vacant, either because of death, resignation, or the creation of a new judicial position, until that position is actually filled with a real live human being, which means, Mr. President, that under our current circumstance, we are talking about a delay of in the range of 2 to 3 years from the time the Judicial Conference, based on historic information, recommends that a vacancy be filled or that a new position should be created until it actually is filled. While that is happening, thousands and thousands of cases are being backlogged in the Federal district courts.

So the second thing we need to do is to encourage at both the White House level, Department of Justice, and within our confirmation process, a more expedited process. I do not mean that we should be lax in terms of standards, but we need a sense of the importance of filling these vacant positions, a sense of urgency, which I do not believe has been evinced during this current administration.

I want to commend Chairman BIDEN for the expeditious handling of those nominations for purposes of confirmation. I use the specific example of our State of Florida, where we currently have close to a crisis—if that word is not appropriately applied—in our Federal judiciary. There are 31 district court positions in Florida. As of today, 10 of those positions are vacant.

What have been the consequences? The consequences have been that the courts in the middle district of Florida, which stretches from Jacksonville to southwest Florida, are not hearing civil cases. If you have an environmental case, or an S&L issue, or any other civil case that requires a Federal judge for disposition, you have to wait in a line that does not move, because no civil cases are being considered by the regular judges in the middle district of Florida, because of their nine positions. Four of them are now vacant.

I commend Chairman BIDEN's sensitivity to this issue. When the President did finally accommodate two individuals to fill two of those four vacancies, he has expedited their hearings and has made it possible for their confirmation to occur as rapidly as possible.

Mr. President, we are facing a very serious problem, one which I think has largely been overlooked in much of the debate we have had the past few days. We have casually adopted provisions to require additional Federal procedures. For instance, one of the amendments that we considered yesterday will require that, under certain circumstances, State prisoners will now have additional Federal sanctions imposed against them. That means more criminal justice filings for our Federal district courts. We have done these things all in the spirit of trying to protect our people, but have also done it in the ignorance of what that implication would be for the totality of our Federal criminal justice system.

Mr. President, I conclude by saying that, at the appropriate time, I hope that the Senate will consider the sense-of-the-Senate proposal that I will offer, which essentially is a directive to the Judicial Conference, urging that it take anticipatatory analysis of the

needs of the Federal judiciary, and that the White House and Department of Justice will be more sensitive and will give a greater priority and sense of responsibility for the urgency in filling these vacancies, so that our Federal district courts can fulfill their very central role in a functioning, balanced Federal criminal justice system.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

AMENDMENT NO. 436

(Purpose: To modify the eligibility criteria for assignment to boot camp prisons, and for other purposes)

Mr. LEVIN. Mr. President, I send an amendment to the desk which I understand has been cleared by both sides.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN] proposes an amendment numbered 436.

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

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

The amendment is as follows:

On page 162, lines 20 and 21, strike "National Drug Control Policy" and insert "the Bureau of Prisons".

On page 162, line 22, strike "Bureau of Prisons" and insert "National Drug Control Policy".

On page 164, line 11, strike "9" and insert "15".

On page 164, lines 22 through 25 and page 165, line 1, strike "Any person who has been convicted of a criminal offense in any State, or who anticipates entering a plea of guilty of such offense, but who has not yet been sentenced, may apply to be assigned to a boot camp" and insert "The head of a State corrections department or the head's designee may apply for boot camp placement for any person who have been convicted of a criminal offense in that State, or who anticipates entering a plea of guilty of such offense, but who has not yet been sentenced".

On page 165, line 4, strike "counsel for the applicant" and insert "the head of the State corrections department or the head's designee".

On page 165, line 8, strike "14" and insert "30".

On page 166, line 6, strike "if the defendant" and all that follows through line 9 and insert "if the defendant is eligible for assignment to a boot camp under State law.".

On page 166, strike lines 16 through 24 and insert the following:

(4) Any State referring a prisoner to a boot camp shall reimburse the Bureau of Prisons for the full cost of the incarceration of the prisoner, except that if the prisoner successfully completes the boot camp program, the Bureau of Prisons shall return to the State 20 percent of the amount paid for that prisoner. The total amount returned to each State under this paragraph in each fiscal year shall be used by that State to provide the aftercare supervision and services required by paragraph (e).

On page 166, after line 24, add the following:

(e) POST-RELEASE SUPERVISION.—(1) Any state seeking to refer a State prisoner to a boot camp prison shall submit to the Director of the Bureau of Prisons an aftercare plan setting forth the provisions that the State will make for the continued supervision of the prisoner following release. The aftercare plan shall also contain provisions for educational and vocational training and drug or other counseling and treatment where appropriate.

(2) The Bureau of Prisons shall develop an aftercare plan setting forth the provisions that will be made for the continued supervision of Federal prisoners following release. The aftercare plan shall also contain provisions for educational and vocational training and drug or other counseling and treatment where appropriate.

On page 167, line 1, strike "(e)" and insert "(f)".

One page 167, line 3, after "1992" insert ", available until expended,".

Mr. LEVIN. Mr. President, Senator BIDEN's bill contains a provision for the establishment of 10 boot camp prisons at closed military installations to serve both State and Federal prisoners. My amendment expands the number of individuals who would be eligible for boot camp placement and gives greater recognition to the experience of the States in operating their boot camp programs.

Boot camps provide an intensive, short-term confinement for young adult offenders who have not been previously imprisoned. Twenty-three States now include boot camps as part of their corrections programs, and the Federal Bureau of Prisons has introduced a modified boot camp program—which they call "intensive incarceration"—on a pilot basis.

Offenders typically spend between 90 and 180 days in boot camps. During that period, they are subject to rigorous discipline, hard work, physical labor, and a military type atmosphere that leaves no room for street-smart talk or actions. If an offender cannot make it through the boot camp program, he is either returned to the sentencing judge or, in some States, to the corrections department, for reassignment to a normal prison term, which is generally longer than the boot camp term.

The Subcommittee on Oversight of Government Management, which I chair, held two hearings on boot camp prisons last year. The subcommittee staff and I visited boot camps in my home State of Michigan and Florida. We were impressed with what we observed.

As traditional prisons at every level of the criminal justice system become more and more overcrowded, leading to early release for some and a search for alternatives to incarceration for others, boot camps are a practical approach to the problem for carefully selected types of criminals.

First, boot camps are serious punishment. They also serve as a deterrent and they help ensure that those who break the law are held accountable for their actions. At the same time, boot camps help to break the cycle of crime. Too often, our prisons—State and Federal—are graduate schools of crime. Offenders, particularly the younger ones, often come out of traditional prisons more hardened and less likely to become useful members of society than when they went in. Boot camp prisons hold promise as a way out of this dilemma.

Last year, Senator COATS and I offered a boot camp amendment that was included in the 1990 crime bill. That amendment called for Federal aid to States to help them create or expand boot camp programs. The amendment attracted widespread, bipartisan support and is now law.

Senator BIDEN's current proposal takes another step by calling for an ambitious expansion of the boot camp concept, using the Federal prison system to make boot camp available to both State and Federal prisoners.

The purpose of my amendment this morning is to strengthen the Biden proposal by enlarging the class of prisoners who could be eligible for this type of incarceration based on what we have learned from the States' experience.

First, my amendment would change the eligibility criteria for Federal prisoners to be placed in boot camp from level 9 under the Federal sentencing guidelines to level 15. In practical terms, this means moving from first-time offenders who are facing 4-to-10 month sentences up to offenders facing up to 2-year sentences.

The experience of States with boot camp programs indicates that even offenders facing up to 5 years in prison can be successful in boot camps. This is in large part because, despite the length of potential sentence, these individuals have never been locked up before. It is also true because the threat of a longer sentence gives prisoners an incentive to complete a far more rigorous boot camp program. However, because I believe it is better to be cautious in this area, my amendment increases the maximum sentence eligible for consideration to 2 years for Federal prisoners.

The second part of my amendment deals with the eligibility of State prisoners for boot camp placement. As I've noted, 23 States have already started boot camp programs, and some of them have been up and running for 7 or 8 years. These States have given a lot of thought to who should be placed in boot camp. In some States, the criteria have been refined over time, based on the States' experience in running a boot camp day-to-day.

My amendment would take advantage of this reservoir of State expertise by deferring to State law in defining which State prisoners are eligible for placement in these new boot camps. Under Senator BIDEN's proposal, only drug offenders and those who have failed a drug test could be sent to boot

camp. I think that these types of offenders are good candidates for boot camp but they are not the only ones.

In my State of Michigan, for example, corrections officials assign offenders convicted of nondrug-related crimes such as breaking and entering, receiving stolen property, assault, and car theft to boot camp. This is simply an area where the States are ahead of the Federal Government, and I think we should let the States use the knowledge they've acquired to help make this new boot camp proposal work.

My amendment makes several other changes. The bill as currently drafted gives the drug czar principal responsibility for choosing boot camp sites, with the Bureau of Prisons serving in an advisory role. This does not make sense, given the Bureau of Prisons' expertise in corrections matters. Therefore, my amendment reverses this relationship by making the Bureau of Prisons the lead agency and the drug czar the adviser.

Also, the bill as currently drafted would allow State prisoners to apply directly for placement in these new boot camps. I think it is more appropriate and wiser to have State corrections departments perform that job and retain control over assignment decisions. My amendment, therefore, would require the State corrections departments to apply for boot camp placement on behalf of State prisoners.

Finally, we learned something else from our hearings and our conversations with State corrections officials last year. Sending a prisoner to boot camp for 90 days or 180 days—however tough the program is—is not going to turn someone's life around in and of itself. There has to be follow-through. Once a prisoner is done with boot camp, he needs to be placed in a situation where the positive new attitudes and sense of responsibility can grow. This may mean a half-way house or intensive probation; it may mean alcohol or drug abuse counseling; it may mean vocational education or literacy training; or it may mean help finding a job.

Whatever it takes in a particular case, the lessons a prisoner learns in boot camp need to be reinforced on the outside if they are going to take hold. My amendment requires that the Federal Government and States that want to place prisoners in boot camp must have plans in place for providing postrelease supervision and services before boot camp placement is permitted, in order to help make sure that the lessons of boot camp stick.

Mr. President, I thank the managers of the bill for clearing the amendment and yield the floor.

The PRESIDING OFFICER. Is there additional debate?

If not, the question occurs on amendment No. 436 proposed by the Senator from Michigan.

The question is on agreeing to the amendment of the Senator from Michigan.

The amendment (No. 436) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. I thank the Chair.

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

The PRESIDING OFFICER (Mr. WELLSTONE). Without objection, it is so ordered.

AMENDMENT NO. 440

(Purpose: To amend the definition of "serous drug offense" in section 924 of title 18, United States Code.)

Mr. SEYMOUR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Senator should be aware that under the agreement his amendment would not be in order at this time.

Mr. SEYMOUR. Mr. President, I believe the amendment has been cleared by both sides.

The PRESIDING OFFICER. Without objection, the clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from California [Mr. SEYMOUR] proposes an amendment numbered 440.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . DEFINITION OF SERIOUS DRUG OFFENSE.

Section 924(e)(2)(A) of title 18, United States Code, is amended by—

(1) adding "or" at the end of clause (ii); and

(2) adding at the end thereof the following new clause:

"(iii) an offense under State law which, if it had been prosecuted as a violation of the Controlled Substances Act as that Act provided at the time of the offense, would have been punishable by a maximum term of ten years or more;".

Mr. SEYMOUR. Mr. President, this amendment which I proposed and was adopted yesterday was inadvertently stricken when the Senate agreed to strike portions of title 12 of S. 1241. I understand that both sides agreed to this amendment, and I thank the Republican leader and the distinguished senior Senator from South Carolina for bringing it to my attention.

Unless there is any objection, Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 440) was agreed to.

Mr. SEYMOUR. I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROTH. 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. ROTH. Mr. President, I ask unanimous consent that we set aside the legislation before us and permit me to read a statement as if in morning business.

Mr. LEAHY. Mr. President, reserving the right to object, and I will not object, will the Senator indicate approximately how much time that might be?

Mr. ROTH. I think about 5 minutes.

Mr. LEAHY. I have no objection.

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

The Senator from Delaware is recognized.

Mr. ROTH. I thank the Chair.

(The remarks of Mr. ROTH pertaining to the introduction of S. 1428 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I ask unanimous consent to be able to continue to speak as in morning business.

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

THE GULF AND KUWAIT

Mr. LEAHY. Mr. President, we are all of us here deeply relieved that the number of Americans returning from the Persian Gulf is so high and, of course, that the number killed and wounded was so low.

Like all of us, I supported our troops in battle and was proud of their bravery and professionalism. We should not forget that more than 300 Americans gave their lives to rid Kuwait of brutal invaders. But today, with the war won and our troops coming home and Kuwait trying to recover from a 7-month ordeal, I am increasingly concerned about events in that country.

In early May I visited Kuwait. My discussions with Embassy officials,

Government representatives, representatives of the Kuwaiti Government, and leaders of the political opposition only served to deepen my concern.

The Kuwaiti royal family, the al Sabahs, when they got invaded, fled their country while thousands of Kuwaiti citizens stayed, suffered, and died in defense of the homeland their leaders had fled from. And now the royal family, having finally come back to their country, appear oblivious of popular changes, of governmental change, in the war's aftermath, popular stirring by those who had the bravery to stay, resist, and fight while their leaders feld.

In fact, the exiled emir showed far more concern for having his palace restored, to a degree I guess he felt suitable, he felt far more concern for that than for his own government when he finally returned to Kuwait. After supervising the restoration of his palace from afar, in a nice, safe place, he finally came back and his first act upon return was to impose martial law, almost to say that, "Those of you who suffered and died to try to protect my country while I lived in the splendid isolation, safely afar, now that I am finally back I am going to impose martial law on you."

The emir named his cousin, Crown Prince Saad Abdulla Sabah, as martial law governor and then, according to press reports, went further and informed citizens abroad they would not be permitted to return home for another 3 months. The emir has finally announced that elections for a new parliament will be held in October 1992, over a year and half after we bled and died for the liberation of Kuwait.

In the meantime, Kuwait continues to be governed by the autocratic rule of the emir, with no elected legislature. Press censorship and suppression of political opposition continues unabated. Kuwait's alien population is oppressed, it is mistreated, with very credible reports of hideous torture and even murder.

Some chaos, of course, is inevitable in Kuwait. It takes time to rebuild institutions. But I can see no reason why immediate, unequivocal, binding commitments to democracy and major political reforms cannot be announced by the Emir and his government today, right now. The 1962 constitution should be reinstated at once, with a firm commitment to women's sufferage, with talks initiated between opposing parties, with political reform, and the building of a consensus for governmental action.

Americans question the need to wait more than a year for free elections. Is this why the al Sabah family were willing to come back to their own country? Are they seeking to avoid scrutiny, by elected representatives, of current rule? Are they concerned that some of the people in their country might actually ask for an accounting of what they have done with billions of dollars from oil revenues?

The warning signs are there. There was one critic who criticized the Sabah family for the opulence in which they have lived in the midst of severe hardship, how they lived totally oblivious to what has gone on in their country, concerned only about their own personal comfort. He criticized. He was shot and killed. Another critic who spoke of the luxury they lived in was seriously wounded.

Leaders of the Kuwaiti resistance are justifiably concerned with the censorship restrictions on political activity and the foot dragging in restoring the 1962 constitution, in fact, the absence of even discussion about reforms and, of course, the absolute dead silence on the part of the Government on extending suffrage to women.

Refugees returning from Iraq and other countries are bitter because of the callous treatment, even the indifference they got from governmental officials and the lack of food and water and transportation. Those Kuwaitis and aliens who showed far more courage than the ruling family, who remained during the cruel Iraqi occupation, are subjected now to arbitrary arrest and mistreatment by Kuwaiti soldiers and police. The steady consolidation of power by the Emir and his pampered family since 1986, when he suspended the National Assembly, continues, and it alarms the people of Kuwait.

I welcome reports that the Emir has vowed to Secretary of State Baker that democracy will be instituted in Kuwait. I welcome reports that he has vowed that the 1962 constitution will be restored. But I think most Kuwaitis have heard all that before and they have heard those promises before.

Reports that soldiers are detaining and torturing and expelling Iraqi sympathizers and people who speak out against the Emir's regime still continue. Palestinians and Arab aliens bear the brunt of this ongoing terrorism.

The recent show trials of alleged collaborators are a farce. People are hearded into the court. The judge is read certain things he wants. They are there for a matter of minutes and it is basically almost like "Gilbert and Sullivan," with the "Off with their heads," except this time it is reality, they are convicted. Herd them in, read a couple of pages, tell the people, "You are convicted." Out you go. With those sentences in "Gilbert and Sullivan," the next night the same troops are there to perform again. Here they are not. It is not a farce; the sentences are real. One defendant was tried and sentenced in a matter of minutes to serve 15 years imprisonment because he wore a Saddam Hussein T-shirt. Remember, the Kuwait Government, just weeks before the invasion, were praising Saddam Hussein. Actually our Government was, too, for that matter. And Saddam Hussein T-shirts were pretty prevalent things.

Death sentences have been ordered, without any right of appeal, on the basis of confessions. Where do these confessions come from? There is pretty credible evidence that the confessions were forced from the people who gave them. Torture somebody, force a confession, and then sentence him to death based on what was forced out of him. The trials are a gross violation of human rights. They deserve the condemnation of every nation with respect for internationally recognized standards of due process and human decency. Kuwait should be condemned for what they have done in these trials in the same way that we have condemned Saddam Hussein for his violations of human rights. We cannot say we condemn violations of human rights by somebody we may be fighting, but, if they are a friend of ours, if they commit human rights violations, this great democracy of ours will close its eyes and not speak about it. Human rights violations are human rights violations, whether committed by friend or foe. The Bush administration should condemn these trials and demand a cessation to forced confessions and convictions based on hearsay and nonexistent evidence by informers and police agents.

I know that Kuwait has never been a democracy and nobody has an illusion about that. Its government is like an extended family empire: Kuwait, Inc., as some have dubbed it.

Before the Iraqi invasion, Kuwait's government was among the world's richest. They had about $100 billion in foreign assets and reserves. They did not hold that in Kuwait, incidentally. Virtually all of it was held abroad. The earnings today on its foreign investments rival the $8 billion a year they used to get from oil exports. I think there has been an international outcry, and justifiably so, over Kuwait. After all, we sent 500,000 very brave young American men and women, along with thousands of our allies, to liberate Kuwait. We have a right to speak about what happens after that. The Bush administration now says our purpose was not to defend democracy in Kuwait but to defeat naked aggression and a threat to the world's supply of oil.

This semifeudal state was in the path of Saddam Hussein's military conquest. But did we liberate the people? Or did we liberate the Government? Does the sacrifice of so many families here in the United States not give us the right to plead a case for Kuwait's true liberation? Have we not a right to question what we have achieved, if we return people to bondage rather than set them free? If we commit the power and the

prestige and the fortunes of the United States to liberate a country, can we not ask what happens to the people of that country after we liberate them?

I have publicly praised the President on his conduct of the war in the Persian Gulf, but I fear I am going to be a far harsher judge of how he keeps the peace now that the war has been won. All Americans can be proud of our men and women who went to the Persian Gulf and served so valiantly. All of us can be proud of the coalition of allies who joined together. Certainly we showed, I believe, a far greater commitment to the liberation of Kuwait than ever their own leaders. American forces moved into Kuwait immediately upon liberation. It was our very brave marines and others, as we now know from press accounts, who went in even before that, U.S. Marines and other forces went in, risking their lives for the liberation of Kuwait. Maybe it should have told us something when the Emir of Kuwait, the leader of the country, did not want to leave his luxurious palace in another safe country to even show up until 6 weeks later. He was not the one willing to risk his life. He was willing to have Americans risk theirs for that liberation. He was not even willing to risk his comfort.

He finally got back there. I think those of us who speak on this floor on behalf of all the brave American men and women who put their lives on the line for that country can now say to him, what are you going to do to make our sacrifice worthwhile?

What are you going to do for your own people? What are you going to do to give them the freedom that we fought and died to preserve for it?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

VIOLENT CRIME CONTROL ACT

The Senate continued with the consideration of the bill.

Mr. MITCHELL. Mr. President, in just a few minutes, I will propound a unanimous consent request which I hope will be agreed to and which will, if agreed to, permit us to complete action on the firearms provision of the bill and then hopefully proceed to complete action on the remainder of the bill.

This proposed agreement is the product of lengthy discussions over several days which I have had with the distinguished Republican leader and a number of interested Senators on both sides. It attempts to give everyone the opportunity to express their view on this subject and then vote on it.

The agreement would provide that, first, I would file a cloture motion on the bill and that we would shortly, thereafter, have a vote on cloture. Obviously, if cloture is invoked, the bill would then be completed under the provisions of rule XXII. If cloture is not invoked, then Senator DOLE would be recognized to offer, in behalf of himself, myself, and several other Senators who have been involved in this process, an amendment relating to firearms control that is a compromise that we have discussed and have agreed to, except for one provision to which I will refer in a moment.

The one provision on which we disagree is preemption of those States which now have waiting periods and background checks and which would not otherwise be covered under the Brady bill provisions or the provisions now in the bill. So what we contemplate is that I would then file a second-degree amendment, which would strike from the compromise the preemption provisions. That is the one matter on which Senator DOLE and I are unable to reach agreement. And that following the vote on my amendment to strike the preemption provisions, we would then vote immediately on the Dole-Mitchell compromise as amended, if amended; that there be no other amendments with respect to firearms to the bill unless agreed to by the managers.

There may be some minor provisions on which there can be agreement on both sides and obviously, that would be, in any event, permitted by unanimous consent. So that would be the provision.

What we want to do in this colloquy is to inform Senators of where we stand and how we hope to proceed and permit a full understanding of this before I actually propound the request.

I would like now, Mr. President, to yield to the distinguished Republican leader for such comments as he may wish to make on this.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, first of all, the majority leader has accurately stated what we would hope to do. Now, we recognize it only takes one Senator to object, and if that is the case then there would be a cloture vote tomorrow.

Mr. MITCHELL. That is correct.

Mr. DOLE. On Saturday. I would say at the outset I am not certain what we gain by that except we discommode about 40 or 50 of our colleagues who have commitments in their home States and other places. So I hope we will be permitted to immediately have a cloture vote, and then we will offer what we consider to be a compromise on every issue except preemption, on which we cannot agree, and then there would be an effort, a motion by the distinguished majority leader to strike preemption. Then we would vote on preemption and then vote on whatever is remaining, amended or unamended. And this would for all practical purposes end the debate on gun provisions.

I am not certain whether or not cloture will be invoked. I would hope cloture is not invoked. If cloture is invoked, then we proceed down the path of rule XXII. But I do know that there are some who would like to see this matter brought to a conclusion; others may feel differently about it.

But I urge my colleagues on this side not to object to this proposal when it is made. We want to give everybody notice. We do not want anybody to misunderstand. Some may have some gun provisions. But it is my hope that if they can be agreed upon by the managers, then I think there is no problem. But if we are going to try to conclude debate on the gun provisions—there were four provisions stricken last night. That was a major step in the right direction as far as this Senator was concerned. They were troubling provisions. Some said they were minor. They were very important to many people. So we believe we have made some progress.

There was a vote on the Stevens amendment. We had good debate. The vote was 54 to 44 against the Stevens amendment. It seems there are some of us, and I would say this particularly for the managers of the crime bill, who would like to complete action on the crime bill, as I understand the Senator from South Carolina. So we are hoping to cooperate and help the managers, too.

So, Mr. President, I hope we can get this agreement.

The PRESIDING OFFICER (Mr. FORD). The majority leader.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. MITCHELL. Would the Senator like me to yield?

Mr. METZENBAUM. Yes.

Mr. MITCHELL. I have not propounded a request yet.

Yes, I will be pleased to yield to the Senators from Ohio, Idaho, and New Mexico.

Mr. CRAIG. Will the Senator yield?

Mr. MITCHELL. Let me yield first to the Senator from Ohio.

Mr. METZENBAUM. There is no secret about—will the Senator from Kansas be good enough to give us his attention? There is no secret about the fact that one of the more controversial aspects of this crime bill has been the so-called Brady bill. Is it my understanding that the amendment to be proposed by the Senator from Kansas is to deal with the question of the waiting period as proposed by the Brady bill with some variations that have been dis-

cussed and negotiated, but that the essence and thrust of the proposal will deal with the whole question of the waiting period before an individual can walk in and buy a gun.

Mr. DOLE. That is correct.

Mr. METZENBAUM. I thank the Senator.

Mr. MITCHELL. I will be pleased to yield to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I thank the leader for yielding.

My concern in what the Senator is proposing to us is the possibility in the remainder of the bill of other gun amendments or amendments prohibiting certain gun ownership or processes and procedures around that ownership being germane. Can I understand that if the Dole-Mitchell or Mitchell-Dole proposal is put forward, and the process as the Senator has underlined it and outlined it in this agreement goes forward, that no other amendments dealing with guns would be in order?

Mr. MITCHELL. Unless otherwise agreed to by both managers.

Mr. CRAIG. Unless otherwise agreed to mutually.

Mr. MITCHELL. That is right, by both managers.

Mr. CRAIG. I thank the leader for yielding.

Mr. MITCHELL. I am pleased to yield to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I thank the majority leader. Last night in a casual conversation I discussed with the leader a paragraph (iv) on page 240 that deals with an "adjudicated mentally defective person" or "mentally incompetent person," telling the majority leader that I desired to debate this in an effort to strike it. I do not know whether we would do it, but the Senator from New Mexico thinks this should be stricken.

How can I make sure that if cloture were invoked, and I would have the right to offer this amendment when I do not know what the substitute amendment does? I cannot amend it by reference because I do not have it.

It is not pending as legislation. Would I just ask the leader to include these words and then if they are included in the substitute I could strike them?

Mr. MITCHELL. Mr. President, I do not know whether that specific provision is in the——

Mr. DOMENICI. In the Mitchell-Dole or Dole-Mitchell?

Mr. MITCHELL. Yes. I do not know. I have not had a chance to review the situation. I may well support striking it or removing it somehow from the bill, and there may not be any disagreement on that.

Mr. DOMENICI. It might be that it is not going to be in the Senator's substitute.

Mr. MITCHELL. It may well be.

Mr. DOMENICI. If it is not, I have no questions. But if it is, I would just want the right to offer an amendment.

Mr. MITCHELL. I must say if I grant consent to offer that amendment, I have a whole bunch of others who want consent. Might I suggest, would not that influence the Senator's decision how to vote on cloture? Obviously, he would be free to vote against cloture at that time. We are going to have a cloture vote. We are either going to have it today or tomorrow.

Mr. DOMENICI. If I did not say I am not going to support cloture and I hope it is not invoked, that is the case. But I just said, it has happened before. What if it does anyway, it is invoked? I will be precluded. And I will work on that in the next 5 minutes or so.

Mr. MITCHELL. OK.

Mr. DOMENICI. I thank the leader.

Mr. MITCHELL. I will be pleased to yield to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. I was not on the floor, and maybe the majority leader said this. If so, I apologize. Did the Senator outline what the makeup of the Dole-Mitchell, Mitchell-Dole amendment will be?

Mr. MITCHELL. No, I did not in my comments. I have not yet propounded a request. But I have a document which we prepared which describes it.

Mr. SYMMS. The reason I asked the question, Mr. President, is that if I read the last part of the unanimous-consent request correctly, no amendments to the language proposed be stricken or motions to recommit be in order, there could be no other issue dealing with firearms in this bill.

Mr. MITCHELL. That is correct.

Mr. SYMMS. That would be correct. But there would be no other limitation with respect to the bill?

Mr. MITCHELL. That is correct.

Mr. SYMMS. In terms of time, time agreements, amendments would be in order.

Mr. President, if the Senator will yield further, I do not know whether I want to object to this or not, but I have been very hesitant to see a bill which carries what I consider to be gun control forward and make it any easier to pass it. I realize the majority leader has the votes and sooner or later he can pass this bill. But it seems to me that for those of us who feel very strongly about not passing gun control legislation, we are making it extremely easy to do this. What time is the Senator proposing to propound this request?

Mr. MITCHELL. In just a few moments, following this discussion. Might I say to the Senator that first there is going to be a cloture vote. We will either have a cloture vote today or a cloture vote tomorrow.

So I understand, the Senator is opposed to cloture.

Mr. SYMMS. That is correct.

Mr. MITCHELL. It may be in his personal interest to have the cloture vote tomorrow but that inconveniences a lot of Senators. The Senator has to make a decision on that. If we cannot get this agreement, we are just going to stay here, stay on the bill, and until it becomes impossible for the Senate to continue. Under the adjournment resolution, we can continue through next Tuesday. I truly hope not to do that.

I tried very hard to accommodate the interests of as many Senators as possible consistent with doing the business we have to do.

Mr. SYMMS. Can I ask the majority leader if he thinks it would be possible—there is one other Senator that I need to talk to before I not lodge an objection. I may decide not to lodge an objection. If I could have a moment to step off the floor, I would appreciate it.

Mr. MITCHELL. Certainly, I am pleased to accommodate the Senator. I want to say that I think everything that is proposed to be done here will occur eventually. The question is whether we can do it in a manner that accommodates the schedules of as many Senators as possible. I understand the Senator has the right to object.

Mr. SYMMS. I do need to speak to one Senator that I told I would object to this, at least until I consult with him. Otherwise, I would be constrained to object.

Mr. MITCHELL. I understand that.

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. GLENN. 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. DIXON. Mr. President, will my friend from Ohio yield?

Mr. GLENN. I yield the floor.

Mr. DIXON. Mr. President, I have the permission of the majority leader. If it is all right with my friends on the other side, I ask unanimous consent to proceed as though in morning business very briefly for the purpose of introducing a bill totally unrelated to the crime bill.

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

The Senator from Illinois is recognized.

Mr. DIXON. I thank the Chair.

(The remarks of Mr. DIXON pertaining to the introduction of S. 1425 are located in today's RECORD under "Statements on Introduced Bills and Joint resolutions.")

The PRESIDING OFFICER. The Senator from Ohio is recognized.

AMENDMENT NO. 501

(Purpose: To require the Bureau of Prisons to study the feasibility and cost-effectiveness of using prefabricated modular units for prison facilities)

Mr. GLENN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Senator from Ohio has the right under the unanimous-consent agreement to forward an amendment to the desk on a Bureau of Prisons study. Is that the amendment of the Senator?

Mr. GLENN. That is correct.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. GLENN] proposes an amendment numbered 501.

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

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

The amendment is as follows:

On page 167, between lines 8 and 9, insert the following:

SEC. 1402. USE OF PREFABRICATED MODULAR HOUSING.

Not later than 20 days after the date of enactment of this Act, and at least 60 days prior to the completion of planning or award of a contract for the acquisition or construction of facilities for any light or medium security prison, the Bureau of Prisons shall prepare and submit to Congress a report that—

(1) assesses the feasibility and cost-effectiveness of using prefabricated modular units such as Quonset huts for permanent or temporary housing and other facilities in light, medium, and maximum security prisons;

(2) describe the types of facilities for which the use of such units is feasible and cost-effective and identifies plans by the Bureau to use such units at particular prisons; and

(3) describes the types of facilities for which the use of such units is considered not to be feasible or cost-effective and identifies plans for particular prisons for which the use of such units either has not been considered or has been rejected for the reason that their use would not be feasible or cost-effective or for any other reason.

Mr. GLENN. Mr. President, I rise today to offer an amendment which has been accepted on both sides, but I do want to make a few remarks about it because I think it is important.

What I am trying to address is a problem which is undermining the effectiveness of our judicial system in States and cities across the country, and wreaking havoc with crime control efforts. That issue is prison overcrowding; to have space to put people once we catch them.

The epidemic of crime plaguing our schools and streets and families is placing everyone in danger. Yesterday the Cleveland Plain Dealer carried an editorial detailing a series of drive-by shootings in Cleveland, including one that claimed the life of a East Side teenager who has just happened to be at the wrong place at the wrong time. "Innocent people," the paper wrote, "are becoming the casualties of this lawlessness."

The breadth and depth of the crime problem in America means that no segment of our society is left untouched. The statistics are truly frightening. Mr. President, according to the Department of Justice there is one murder committed every 24 minutes in the United States; one forceable rape every 6 minutes; one robbery every 55 seconds; and one violent crime every 19 seconds. All told, 6 million Americans, from all backgrounds and walks of life, fall victim to violent crimes each year.

The crime package we are considering today will strengthen many of the tools available to fight the increasing tide of violent crime. It is my intention at this point to probably vote for it. The legislation provides some $1 billion to help hire more police officers, more prosecutors, more FBI agents, and more DEA agents. The crime bill we are now considering shows that the Federal Government is ready to fight fire with fire by stepping up enforcement.

By stepping up enforcement, however, we create a new problem. When we get criminals off the streets, where are we going to put them?

With or without the current crime bill, one daunting fact remains: Regardless of how much we beef up enforcement and increase the length of sentences, our prison system does not give us the ability to carry out the tough, mandatory prison terms which are already the law of the land. It is not that we need more laws. We are not adequately enforcing and carrying out sentences under existing laws.

It is hard to believe, but the number of prisoners in State and Federal prisons has increased by over 100 percent since 1980, in just 11 years of time. And dozens of States are under court order to not take in any more prisoners. There is no place to put them. What good does it do to catch them?

Judges and prison officials are being forced to play a sort of Russian roulette in allocating prison space, making impossible choices on who to keep locked up and who to let go.

These are choices which should not have to be made. Criminals should get the message that whether they are convicted of a drive-by shooting or the sale of drugs to a child, they will serve their full sentences. Unfortunately, this is not the message that they are receiving.

Stiff prison terms plus overloaded prisons send a message to criminals that society wants to put them away but does not have the means. In other words, society talks like Rambo and acts like Bambi. A career of crime is a career with little or no risk of really serving hard time.

If there is "no room at the inn" for convicted criminals, then the deterrent of a long prison term is made hollow. It is a mockery.

The amendment I offer today would look at ways of alleviating our Nation's immediate prison overcrowding crisis, while at the same time making the housing of criminals more cost-effective.

What I am going to talk about now is not the hard core prisoners who must be in high security prisons. Those are expensive. But let me go back to some earlier days in my own life.

When I was in the Marine Corps I spent a good deal of my time in Quonset huts. Quonset huts, so named because they were first manufactured in Quonset Point, RI, are prefabricated shelters of corrugated metal. We have all seen them. They are rounded, long huts. They are very cheap. They can be put up very rapidly.

My amendment authorizes a study by the Bureau of Prisons to investigate the feasibility of using Quonset Huts and/or other modular or prefabricated structures, such as the Butler buildings or other alternatives, even inflatables, that would be alternatives to traditional, expensive, brick and mortar facilities.

There are those, I am sure, who would say that Quonset huts and their compatriots, other rapid-construction-type buildings, might be too harsh. It would provide prisoners with inadequate living space or too much of a spartan existence.

I make two points. First, I, like millions of military personnel, have spent a significant part of my life in those types of prefab structures. If it is good enough to house soldiers and sailors and marines serving their country, I feel it is good enough to house convicted criminals.

I repeat, I am not talking about the hard core criminals who are really big, major security risks. I am talking about those who are in for lesser crimes who are not that violent, hard core group of prisoners. We need someplace to put them.

We have some estimates that to make modern maximum security prison cells these days, it may cost as much as $175,000 per prisoner. Certainly we can incarcerate people who deserve incarceration at a far lesser cost than that.

While Quonset huts may not offer plush accommodations, I believe there is something to be said for prisoners serving their time in a spartan but certainly livable, condition. We have had times in the past, on military bases, whole cities of these prefabricated structures that grew up almost overnight and they were quite livable. They can have a Quonset hut or a prefab building for a library, recreation center, training hut, a TV place, a sick bay, and one for storage. And they are quite OK.

The structure might not have the plush gymnasiums and all the Nautilus equipment, but people can get their ex-

ercise outside. And we surround these places with big expensive walls. For minimum—and medium security—prisoners, which are the majority of the prisoners that are not given jail sentences at all or serve very little time, we can surround these facilities with things like concertina wire. What is wrong with that to keep them in? That would not cost very much. And no walls would even be required.

Mr. President, I think some of these less costly options are things that would help us get our prison system back on an even keel again, and are far less expensive. For many of these type structures you do not even need a concrete base. They can be built on beams, have plywood floors, and they last for years and years. Some of them from back in World War II days, in fact, are still in use.

Do we need concrete driveways and walkways? I would say gravel was quite adequate for us back in times past and would be adequate now. You can even have the prisoners build them themselves in a few hours, as many of us did in the past with a hammer in our hand and help put those things together. They go up rapidly. They are comfortable once they are built.

I spent a winter in China in one of those and spent summers in them also.

I do not think we need air-conditioning for these. That would cut back some of the expenses, also. I might say, Annie, my wife, and two children lived at two different times in half a standard Quonset hut and went through a winter at Quantico where we got up every morning and started a wood fire. I do not see anything wrong with prisoners doing anything like that either. These things can be designed in prefab buildings with open bunk rooms or individual rooms. They can be regular-size buildings or things like the king-size Quonset that are larger, or what ever.

The point is, we can do much better at locking up more of our people and making prison terms certain if we can put up some of these facilities that are not so onerous to the taxpayer. Taxpayers pay up to $175,000 per prisoner for maximum security facilities.

Do we need what we could call palaces for prisoners? Do they have to have all of those type facilities? I think not. Palaces for prisoners, palaces for punks, we might say. I do not think we need that.

Are we afraid of somehow warping the people put into these facilities? I think not. Maybe some of their personalities need to be warped a bit. The situation we find ourselves in right now is the police go out and risk their lives, judges may want to give tough sentences, the public wants to put these people away. But, we cannot always do that because the jails cost too much. So we turn them loose and say, now, you be good or else.

With our high recidivism rate, up to 70-some percent I understand it is now, then we start over again. The police again apprehend them, the judges again sentence them. Again, there is no place to put them. We have repeat offenders with rap sheets that show all their crimes, but little penalty shown on the other side of that rap sheet.

The District of Columbia will have, I suppose, between 400 and 500 murders this year; drugs rampant; crime all-time high; police risk their lives. They cannot send them to Lorton. Lorton is beyond their maximum capacity already, so they are contracting out. And judges, at the same time, are not sentencing people for the sentences they should have because there is no place to put them.

Mr. President, I would find it quite acceptable to say that we should go back to some of the ideas of earlier days, such as work farms. What is wrong with having a prison area that is on 500 or 1,000 acres, where these prisoners go out and grow their own food? I think a hoe in a man's hand can be a real character builder. It might just help some of these people to mend the error of their ways. They will see that food does not always come from fast food windows. They will see that french fries start in the ground and corn does an amazing growing job in some 90 days. At harvest time you eat some, you store some, you preserve some and you can some for the winter and for next spring.

Is that a crazy idea that these people might be required to grow their own food, I do not find any difficulty with that at all in my own opinion of what I think our penal system should do. These ideas are consistent with our justice system, that says that you can sentence people and when you sentence them, there will be a facility to put them in.

Mr. President, I am not arguing that things like Quonset huts or prefab buildings would be the answer for housing all prisoners, but, at the very least, it would provide an overflow relief valve. Not all prisoners need to be housed in high security environments. Nonetheless, they certainly should be locked up, and nobody questions that they must be locked up. Housing such criminals in less than plush surroundings, housing them in prefabricated housing accomplishes two important things. First, it ensures that all offenders, regardless of their offense, serve time. Second, it frees up space in the brick and mortar high-security facilities for violent criminals to serve a greater percentage of their prison terms.

I know that a number of States are currently using prefab housing to alleviate some of their prison overcrowding problems. My own State of Ohio has been experimenting to some extent with that. In Pennsylvania, they have 128 prefab cells which were designed, manufactured and installed and occupied in 140 days. In Nassau County, Long Island, construction has begun on an 832-cell full-service jail of this type.

The experience of these States may provide guidance for the Nation as to the practicality of some of this prefab housing. Buildings can be ready for occupancy quickly, usually in less than half the time it takes to build a conventional structure. They can be designed for easy expansion, and adapted to other uses if the prison space is no longer needed. An entire building or portion of it can even be removed from a site altogther, if necessary.

So, Mr. President, my amendment is very simple. It just requires the Bureau of Prisons to submit to the Congress a feasibility study prior to acquiring or constructing any light- or medium-security prisons. Title XIV of the crime bill, in fact, before us authorizes the establishment of 10 military style boot camps. I strongly support this provision and would like to have the Bureau of Prisons specifically look at these facilities for use as possible test cases for this concept.

It is perfectly conceivable to expect that prefab housing on these and other sites could save the taxpayers literally hundreds of millions of dollars in construction costs, and result in the confinement of far more prisoners. Traditional brick and mortar facilities cost a low of between $35,000 and $50,000 per bed to put up. On the highside, some costs run up as high as $175,000 per prisoner. Prefab housing, I think, could be constructed for a small fraction of this cost.

Pending the outcome of a study by the Bureau of Prisons on this issue, I see no reason why the alternative I support cannot dramatically increase prison space while at the same time provide taxpayers with more bunks for the buck.

Mr. President, the current prison overcrowding crisis constitutes a direct threat to the safety of our Nation's citizens and the effectiveness of our judicial system. Desperate problems often require innovative solutions, and I believe that alternative prison construction is one such solution.

Mr. President, this amendment has been cleared on both sides of the aisle.

I look forward to getting this Bureau of Prisons study because I think it may show we can lock up more criminals. Our crime bill tries to get tough with criminals. We try to enhance apprehension. We try to provide ways for the courts and everyone else to treat criminals in a tough fashion. But at the end of the line, with all of the apprehension, all of the court procedures and everything else, if there is no place to put them, it makes very little difference what we have done.

This amendment proposes a way of getting tough on crime, but easing up

on the tax dollars. I think it will be a big step forward to make certain that every person who is apprehended and sentenced serves time—and full-time—without having that sentence cut short just because there is no prison facility to keep that person locked up.

So, Mr. President, I look forward to having this amendment approved by the full Senate. As I said, it has been cleared by both sides by the distinguished floor managers of the bill. I ask for its consideration.

The PRESIDING OFFICER. Is there further debate?

Hearing none, the question is on agreeing to the amendment.

The amendment (No. 501) was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote.

Mr. BIDEN. 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 New Mexico.

Mr. DOMENICI. Mr. President, I had no objection to the amendment of the distinguished Senator from Ohio, but I though I might take about 3 or 4 minutes to discuss the overall authorizations included in this bill before us for law enforcement in the United States.

First, because some of the language in the bill which is pending says we are going to have new FBI agents, new DEA agents, and new district judges, new U.S. attorneys, I hope no one really takes any of that very seriously because, actually, we do not need to provide for any more.

The truth is we are not paying now for what are already authorized. As a matter of fact, some may be interested in knowing if we think we are providing new FBI agents in this bill, the appropriations bill which came out of the House reduced the FBI number of agents by 500, that is, 500 less than the President asked for, reduced the number of new U.S. attorneys to zero, no new ones, and the President asked for about 65.

So I thought it would be good to remind those who are concerned about crime and fighting crime that probably none of the provisions in this bill authorizing more law enforcement fighters—FBI, DEA, U.S. attorneys—will be a reality. They have made for good rhetoric but clearly we do not have the money to pay for any of them.

We are providing less this year than the President asked for. It does not seem we will have any money next year; we will have less, and the year after perhaps even less. So we do not need any more authorization. What we need is more priority, that is, restrain other programs so we can pay for what we have already authorized.

I thank the Chair, and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. LIEBERMAN). Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, in accordance with my prior statement I now will seek consent as outlined earlier in my colloquy with the distinguished Republican leader and other Senators.

Mr. President, I ask unanimous consent that a vote on the cloture motion that I now send to the desk occur at 2:25 p.m. today; that if cloture is invoked, the bill be completed under the provisions of rule XXII; that if cloture is not invoked Senator DOLE be recognized, without intervening action or debate, to offer an amendment on behalf of himself, Senator METZENBAUM, and others; that the only amendment to the amendment in order be one to be offered by Senator MITCHELL relative to the State preemption provision on which there be 1 hour for debate, equally divided and controlled between Senators MITCHELL and DOLE; following the conclusion or yielding back of time there be a vote on the Mitchell amendment followed immediately without intervening action or debate by a vote on the Dole-Metzenbaum amendment, as amended, if amended; and that no amendments to the language proposed to be stricken or motions to recommit be in order prior to the disposition of the Dole-Metzenbaum amendment, as amended, if amended; and that no further amendments on the topic of firearms be in order to this bill unless agreed to by the managers.

Mr. DOLE. Mr. President, reserving the right to object, and I shall not object, I think the Senator from Alaska wishes to be heard on a reservation because he has discovered some provisions that were not called to our attention earlier. I think he is now able to resolve concerns about four out of the five. I would rather he speak to the reservation. So I yield to the Senator from Alaska.

Mr. STEVENS. Mr. President, reserving the right to object, and I do not think I shall object, I have not seen a copy of this substitute that is mentioned. Will we be able to see that before this goes into effect? I would like to see it. Is it in draft form now?

Mr. DOLE. If I may respond to the Senator from Alaska, I have my staff, along with attorneys, going over the draft. The answer is, yes, the Senator can see it forthwith.

Mr. STEVENS. I think we should be able to see that before we agree.

Second, in that regard, I have been trying to pin down the meaning of the provision that is section 1239 on page 150, dealing with the receipt of firearms by a nonresident. I am informed that was in the President's bill. I thank the majority staff for giving us that information. I am also informed that its intent is to cover those legal resident aliens who are associated with the embassies of foreign countries. I do not find any such limitation, and it was called to my attention as being a provision that might have a serious impact upon foreign visitors who come to a State such as mine to hunt and to buy guns. They usually end up by giving them to their guides or leaving them in this country. This provision, as I understand it, would bar anybody from even delivering to that person a gun for such a time period.

We are trying to find an interpretation of that. I would like to ask if we can exclude from the restrictions that are in the majority leader's unanimous-consent agreement an amendment to deal with that section, in which we would hope to add an interpretive provision to make sure it does not restrict legal tourists in the country, for the specific purpose of hunting, from acquiring a firearm for that purpose. It is my understanding that it deals with more than just handguns; it deals with firearms per se.

I am informed that this provision does include long guns. This will cover rifles and shotguns. The other provisions that we were considering do not. If that is correct, it is a provision that is in a different category than the handgun provision we were dealing with last night. That amendment dealt only with handgun provisions. I would like to clarify that section if this agreement is entered into.

Mr. MITCHELL. Well, Mr. President, if I might respond, I am not familiar with the provision to which the Senator just referred. I first learned of it a few moments ago and was advised it was in the President's bill, which was included in the bill presented here. The Senator makes a persuasive case and, on the face of it, without knowing of any reason to the contrary, I would be persuaded to be supportive of that effort.

The problem with making an exception to the agreement is that there are a number of Senators on our side who have expressed an interest in offering amendments, but would agree to permit the agreement to go forward only on the condition that there would not be any amendments. So if you have one, I would feel compelled to return to them, and they may well want amendments, which may, in effect, defeat the purpose of this.

I wonder if the Senator would permit us to proceed with the understanding that we will work with the managers and others and seek to get that corrected. I am unable to make a commit-

ment as to the result now. I will make a commitment as to the effort now.

As the Senator knows, we took, our several provisions yesterday that he and others wished to be removed. I commit myself to a good-faith effort, but I do not see an obstacle. I have not heard from anybody who might have a contrary view. I do not know, for example, whether the President, in whose bill this was included, might feel so strongly about it that he or members of his administration would object to its being taken out. I do not think they would. My guess is that not many of them are aware of the provision or did not have the intention stated by the Senator.

Mr. STEVENS. Mr. President, I am grateful to the majority leader for his comments. It takes a long time to get bills like this analyzed by people who are directly affected, and live 5,000 miles away. If this is going to seriously impede the very substantial guide business for foreign hunters in my State, then I have no alternative but to object. All I want to do is to have the authority to offer an amendment that would clarify that with regard to the persons that are affected. I think that is not really a gun amendment. But, as I understand the majority leader's amendment, it may be. I am not seeking to change the imposition of this for the people it should be directed to. I want to make certain it does not catch up those that it was not intended to cover.

Mr. MITCHELL. Mr. President, I have no problem with that, no objection to that; and assuming there is no argument to the contrary, of which I am now unaware, I would be prepared to support that fully and urge that it be approved by the managers. But I cannot, in good conscious and good faith to others who have been persuaded to permit the agreement to go forward on the condition there be no amendments, agree to one amendment without first going back to them and explaining it, which, if it leads to many amendments, would defeat the purpose of the agreement. I am not disagreeing, and I think the Senator would feel the same way if he were among those who agreed to go forward on the basis of no amendment. I hope he will permit us to proceed in what I expect will not a difficult. I know it will be a good-faith effort to accommodate the legitimate concern which the Senator has expressed.

The PRESIDING OFFICER. Is there objection?

Mr. WALLOP. Reserving the right to object. On the same subject that the Senator from Alaska raises, there is, among my constituents in Wyoming, a man named Roger Green, whose livelihood is a gunsmith, among whose customers are international gun collectors from all over the world. A significant portion of his business is the manufacture and construction of guns, sporting weapons, for these foreign collectors. It would strike me that we are about to remove half of his livelihood.

Mr. MITCHELL. Well, Mr. President, I respond, as I have said previously, I am persuaded by the logic of the argument. This was a proposal by the President.

Mr. WALLOP. Who is not infallible, as the majority leader occasionally points out.

Mr. MITCHELL. I think we ought to give those who made the proposal the opportunity to tell us if there is a reasonable argument in response to that made by the Senators. I have no problem trying to get it out and, under the agreement, the managers can agree to take an amendment, and I would expect this kind of amendment.

The problem I have is that if we agree to reserve for one amendment, then we have to go back to other Senators who said they want amendments, and give them the opportunity to offer their amendments, or to agree not to offer amendments in light of the knowledge that there is an amendment, as opposed to the current situation in which there are none. I really think this is not going to be a problem. I hope we could get this. There are a lot of Senators who are anxious to proceed with respect to this matter. That is the situation in which we are in.

Mr. WALLOP. Again, I just ask—I have no quarrel and no doubt in my mind of the majority leader's circumstance and that he will try. But where does that leave us, the conclusion of all of this, if after everything is tried, we fail, and we then have agreed to something that is known to penetrate the livelihoods of some perfectly legitimate citizens of America?

Mr. MITCHELL. If that is the case, I assure the Senator there is a long way between action this afternoon, final passage of this bill in the Senate, and this becoming law. We have the conference coming up. It has to go to the President. If the provision is so lacking in merit, as suggested, then it seems to me it will not be difficult to get that done by consent here some Tuesday night when we get back. What we have here is a procedural problem with how best to go forward.

Mr. WALLOP. Yes, I understand that, except that as one understands it, the consent request being propounded would preclude that.

Mr. MITCHELL. I can only say to my colleagues, and I appreciate the concerns expressed, I hope we can get this request agreed to. If we cannot, then we will timely have to return to the bill and file the cloture motion and have a cloture vote tomorrow. I do not want to do that and I do not think this is such that it ought to prevent us from getting the agreement. Under the circumstance I would hope the Senator would accept the good-faith representation and we will look at it. I am persuaded. Unless someone on the other side has some compelling argument that is not obvious now, I will do all I can to help the Senators make the change.

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

Mr. MITCHELL. Yes.

Mr. STEVENS. I want to be in good faith on this too, as I am sure my friend is. My problem is I am just informed now what I said was true, absolutely, that these long guns were not covered before; they will be covered by this provision. Under the firearms concept, it will apply to nonresident tourists who come to our country specifically to hunt and to buy guns as recommended by the guides. They have been able to do so in the past but will not be able to do that if that becomes law.

I am not able to get hold of the person who prepared this section. We are trying to do that now, in the President's bill, as to whether that was the intention.

I was informed the intention was to prevent the delivery of guns to those people who claim legal nonresident status associated with embassies and foreign diplomatic efforts. It goes further, according to my people, and I wish to suggest that if we can get the kind of information which I think we can here in the next hour, we can include that in the minority leader's amendment.

Mr. MITCHELL. We will certainly be prepared to consider that and that may be one alternative way to proceed.

Mr. STEVENS. It is not barred, but it is not subject to amendment once presented.

Mr. MITCHELL. If the managers agree, you can offer the amendment. It is so clear, and it seems to me clear, that there should not be any trouble in persuading the managers, I hope. There will be no trouble in persuading me.

Mr. STEVENS. I hear from the chairman of the Judiciary Committee they have no reservation about changing the definition of what a person means under the amendment.

Mr. MITCHELL. My apologies. I was momentarily distracted.

Mr. STEVENS. I inquired of the distinguished Senator from Delaware, the chairman of the Judiciary Committee, who informed us it was in the President's bill. So if they are not the authors of this provision, I am sure the President is personally not the author either.

Mr. BIDEN. Mr. President, I apologize to the Senator from Alaska. I have not been listening. Quite frankly, I have been working on another matter. I am not certain. If I understand the broad outlines, it is a provision in the President's bill that we incorporated into the Biden bill which deal with the ability of nonresidents to purchase firearms. Is that the provision the Senator is referring to?

Mr. STEVENS. That is right.

Mr. BIDEN. What is his question?

Mr. STEVENS. It is my understanding it deals now with the portion of the law that is not covered under the existing law with the delivery of shotguns, rifles, or long guns to nonresidents who are legally in this country for the purpose of hunting. And according to our laws, nonresidents can apply and obtain licenses to hunt in my State. They do quite often and do buy guns.

Mr. BIDEN. As I read the President's legislation, I think that is correct. You will have to give me a moment to take a look at the legislation.

Mr. STEVENS. What I am trying to do is preserve the right, notwithstanding this amendment on the topic of firearms, to deal with the topic of those who may obtain firearms.

I might state, Mr. President, if the majority leader and the chairman would permit me, I am just informed that the Justice Department has been monitoring this exchange and is sending up a proposed change; it will be here in a few minutes.

Mr. MITCHELL. If that is the case, we ought to be able to include it in our bill and have no disagreement to do so.

Mr. STEVENS. All right on that basis.

The PRESIDING OFFICER. Is there objection? The majority leader has the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MITCHELL. Mr. President, I modify my request, so that the vote on the cloture motion occur at 2:45 rather than at 2:25 as stated in the request initially. In all other respects I renew the request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, Senators should be aware that a vote on the cloture motion will occur at 2:45 p.m. followed by, if cloture is invoked, we will then proceed to completion of the bill under rule XXII. If cloture is not invoked, then Senator DOLE will be recognized to offer the Dole-Metzenbaum amendment. I will then be recognized to offer an amendment to that amendment and there will be 1 hour of debate and vote on both those amendments.

I thank my colleagues for their patience.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CLOTURE MOTION

The PRESIDING OFFICER. By unanimous consent, the hour of 2:45 p.m. having arrived, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on S. 1241, a bill to control and reduce violent crime:

Jeff Bingaman, George Mitchell, Tom Daschle, B.A. Mikulski, David L. Boren, Claiborne Pell, J.J. Exon, Daniel K. Akaka, Joe Biden, Howard M. Metzenbaum, Terry Sanford, J. Lieberman, Kent Conrad, Charles A. Robb, Edward M. Kennedy, Brock Adams, Herb Kohl.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the bill S. 1241, a bill to control and reduce violent crime, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

The yeas and nays resulted—yeas 41, nays 58, as follows:

[Rollcall Vote No. 114 Leg.]

YEAS—41

Adams	Fowler	Lieberman
Akaka	Glenn	Mikulski
Bentsen	Gore	Mitchell
Biden	Graham	Moynihan
Bradley	Harkin	Nunn
Bumpers	Hollings	Pell
Burdick	Inouye	Riegle
Chafee	Jeffords	Robb
Cranston	Kennedy	Sanford
Daschle	Kerrey	Sarbanes
DeConcini	Kerry	Simon
Dixon	Kohl	Wirth
Dodd	Lautenberg	Wofford
Durenberger	Leahy	

NAYS—58

Baucus	Brown	Cochran
Bingaman	Bryan	Cohen
Bond	Burns	Conrad
Boren	Byrd	Craig
Breaux	Coats	D'Amato
Danforth	Kasten	Rudman
Dole	Levin	Sasser
Domenici	Lott	Seymour
Exon	Lugar	Shelby
Ford	Mack	Simpson
Garn	McCain	Smith
Gorton	McConnell	Specter
Gramm	Metzenbaum	Stevens
Grassley	Murkowski	Symms
Hatch	Nickles	Thurmond
Hatfield	Packwood	Wallop
Heflin	Pressler	Warner
Helms	Reid	Wellstone
Johnston	Rockefeller	
Kassebaum	Roth	

NOT VOTING—1

Pryor

The PRESIDING OFFICER (Mr. SANFORD). On this vote, the yeas are 41, the nays are 58. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

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

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

Mr. DOLE. Mr. President, let me first say to my colleagues on this side that we are going to try to expedite this, and still have a discussion here principally of the compromise. A number of Members have plans that have been made a long time ago. It is very difficult to get reservations on a holiday weekend. So I tell you we are going to move as quickly as we can.

We are not in the process of going over the amendment very carefully to make certain everything we agreed upon is in the amendment, and nothing else. That should be available in a few moments. In the meantime, it seems to me, in order to move everything along, we should make our statements. And I will make my statement on the so-called compromise at this time. I will offer the compromise later.

Mr. President, we have been preparing for this vote for a long time. The question is how best guarantee to the American people that Congress has done everything we are able to ensure those who have lost their right to possess firearms are, in fact, kept from obtaining guns.

Every Senator is deeply saddened each and every time a gun is used by one individual against another. So there is no question that every Senator wants some sanity brought to the runaway use of firearms to threaten, maim and kill members of our society.

This is an emotional issue, one that shakes many Senators to the core of their beliefs, but at the core of each and every Senator is the desire to enact a system to keep guns in their rightful place, while punishing those who misuse the constitutional right to keep and bear arms.

On many occasions, the majority leader has said that both sides to this debate actually agree on more issues than those on which they disagree. That statement contains more truth than any other entered into this debate.

With that in mind, the majority leader and I, along with the assistance of a great many of our colleagues on both sides of the aisle, have been working for several weeks to craft what is now being called the compromise approach.

At the outset, let me be clear about my views. To look the American people in the eye and tell them we have done the best we could to guarantee guns sold in stores throughout the country were being purchased only by those allowed to own firearms, we must do a background check each and every time any gun is sold. The 1968 Gun Control Act is very specific about who has forfeited this truly American right. Only when we have a system to check the name of the prospective purchaser against the list of those who forfeited the right to gun ownership can we give that guarantee to the American people.

Waiting periods, of any length, do not inherently contain this guarantee. And, background checks against lists containing only partial information give only a partial guarantee. Therefore, I do not support waiting periods in and of themselves. Nor do I support a system whereby each State would check records available only to that State and no other State.

The so-called compromise contains this total system. However, it also gives to those who support the waiting periods of the Brady bill the waiting periods they support.

Ninety days after enactment, a Federal waiting period of 5 business days would be imposed on the States. This waiting period applies only to handguns which is the identical application contained in the Brady bill. The Brady bill also contains a provision under which any State that conducts background checks on prospective handgun purchasers is exempt from this Federal waiting period. The compromise contains this principle as well.

Two and one-half years after enactment, a Federal—50-State—background check is put into place only if the Attorney General certifies that the system contains 5 years of criminal histories with 80 percent reliability. When the system is certified, consistent with the Brady bill, the Federal waiting period is removed.

Mr. President, that, in a nutshell, is the basic outline of the compromise—2½ years of a Federal waiting period followed by a Federal background check.

In negotiating this compromise, many provisions were added to ensure we could give an ironclad guarantee to the American people that we have developed the best system. Six months after the date of enactment, the Attorney General will announce two decisions: First, he must designate the system to be used including the software each State government and Federal agency must use for their records. Second, after reviewing the condition of the records on a State-by-State basis, he will establish a timetable for each of the States to computerize criminal records to guarantee that in 5 years each of the States are fully computerized and are at least 80 percent accurate for at least 5 previous years.

Two and one-half years after enactment, the Attorney General will decide if the background check system can be certified for operation. In order to certify, the States have the capacity to operate, that the States are in compliance with the timetables established earlier, and that the system possesses a national average data bank of criminal records for the previous 5 years which is at least 80 percent accurate. States not capable or not on schedule with their timetable will remain under the 5-business day waiting period. Once operational, the system will check the background of purchasers of all firearms, not just handguns as is envisioned by the Brady bill.

There is one remaining guarantee we can give the American people. If any State does not achieve the 5-year goal of possessing 5 years of criminal records with 80-percent accuracy within 6 years of enactment, that State is again subjected to the 5-business day waiting period until it comes into compliance.

Further, we have put two what I will call "hammers" contained in the bill. To ensure the Justice Department does its part, if the hardware is not ready in 2½ years, the Department of Justice will lose 5 percent of its general administrative funds each and every day until the system is up and running. Second, to ensure States do their part, any State not cooperating could lose up to 50 percent of the funds received by State police agencies from the Federal Government under the State and local law enforcement grant program.

At this point, let me state the reason for the hammer on the Justice Department. The 1988 drug bill contained a requirement that the department establish a system to check felony records of prospective gun purchasers. Notwithstanding the repeated efforts of the Attorney General to establish the system, it does not exist. The nay sayers and hand wringers have frustrated the very able efforts of the attorney general. The compromise says enough is enough. Forget the gold plating and get the system to at least 80-percent reliability. This is not intended to create an incentive for the attorney general to make an inaccurate certification, and I am certain no attorney general would engage in that practice.

The bill also contains assistance to States in the form of $100 million to help create computer bases.

Mr. President, on all of these matters, the distinguished majority leader and I, along with a great many of our colleagues are in agreement. There is one item of disagreement in the compromise. With respect to waiting periods established by the States, a separate procedure is established for treatment. The Brady bill has as its basic premise that since firearms are easily transportable across State lines, a Federal system is needed. Second, the Brady bill established the principle that, if background checks are conducted, no waiting period is required.

If a State has a waiting period, that waiting period will remain in effect for a minimum of 5 years. Only if all 50 States have records with 80-percent reliability will there be any effect on State-imposed waiting periods. However, only if two stringent conditions are met, State waiting periods may be preempted. First, the system must be in place in all 50 States. Second, after a minimum of 5 years, only if all 50 States have 5 years of records with at least 80-percent accuracy, will preemption occur.

I happen to believe this is fully consistent with the Brady bill. We must remember, the Brady bill says if there is a check, there is no need for a wait. The preemption provision takes it a step further and says only if there is a reliable check, is there no need for State waiting periods.

Mr. President, let me say that I think we have made some progress. I hope that when we have the vote on the so-called compromise amendment, it will be adopted by a substantial majority. I will go next door to see if we have been able to agree on the entire compromise, and I will be offering it in a few moments.

Mr. MITCHELL. Mr. President, I yield 10 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, if you went out today to buy a lottery ticket, the odds are something like one million to one against you. Those odds are no greater than the odds you could have received 6 months ago that the distinguished minority leader and I would be joining together to offer the Brady amendment on the floor of the Senate. I am very pleased that it has occurred and that we have been able to work this matter out.

Mr. President, I rise in support of this Brady bill amendment to the crime bill.

It was over 4 years ago that I first introduced a bill to mandate a waiting period.

In that time over 80,000 people have been killed with handguns.

I do not rise to say that had the Brady bill been in effect since that

time, all 80,000 people would not have been killed. Of course not. I think that a substantially lesser number would have been killed.

This past January, I again introduced this bill, S. 257, along with Senators KASSEBAUM, CHAFEE, KENNEDY, SIMON, PELL, LAUTENBERG, MIKULSKI, MOYNIHAN, KERRY, AKAKA, LEVIN, GLENN, DODD, WELLSTONE, HARKIN, and CRANSTON.

We named the bill after two very courageous people, Jim and Sarah Brady.

As everyone knows, Jim Brady was serving as President Reagan's press secretary 10 years ago, when he was shot in the head by John Hinckley in his attempt to assassinate the President.

I want to say that no two people have conducted themselves more admirably, and no two people have been more persistent, more persuasive in talking with Members of the U.S. Senate and the House than have the Bradys. They have been pleasant, cooperative, and they have been wonderful in their approach. They have tried to impress upon people in the House and the Senate the significance of a 1-week waiting period.

I think the entire Nation owes them a great debt of gratitude. It goes without saying that we owe Jim Brady a tremendous debt of gratitude for what occurred to him. John Hinckley shot him. We owe a special debt of gratitude to the two of them for what they have done in making this day possible. Without them, we would not be standing here prepared to adopt the Brady amendment.

This amendment before us would require a national 5-working-day waiting period prior to the purchase of a handgun—I make an emphasis—5 working day. So that although the original bill said 7 day, it pretty much comes to the same, maybe a little longer. It depends on the day of the week in which it is done.

Within 6 months of the enactment of this bill, the Attorney General will select a system and software for a national instant background checks of persons who attempt to purchase firearms.

Within 12 months of enactment the Attorney General will review the condition of each State's criminal history records and establish a timetable for each State to plug those records into the national system.

Thirty months after enactment or any time thereafter the Attorney General may certify that the national system has met the timetables and is operational.

Such certification cannot be made until the Attorney General can certify that the following standards have been met:

First, the national system must be able to access criminal history records that have at least 80 percent currency of case dispositions, that is at least 80 percent of the arrest records must contain information as to whether or not there was a conviction after arrest, for all records for which there has been some activity in the last 5 years, that is records of people who have been arrested in the last 5 years.

Second, the States must be in compliance with the State timetables.

If the Attorney General can certify this, then the waiting period is no longer in effect, and is replaced by this national instant check system.

If any individual State has not met its timetable the waiting period is still required in that State.

Six years after enactment, if any State where the waiting period phased out has not met the State standard of records covering the preceding 5 years with 80 percent currency of case dispositions, then the 5-business day waiting period is reinstated in that State.

The Brady bill, as I introduced it in the Senate, and as was passed by the House, provided for a phaseout of the waiting period once we could adequately do instant background checks.

This amendment establishes tough, definable standards for purposes of determining when we have reached that point.

Unlike the McCollum amendment which set no specific standards for an instant check system, this amendment sets specific standards that will ensure that the Attorney General cannot certify a sham instant check system.

Most importantly, unlike McCollum, Staggers, and Stevens, this Brady bill amendment would, 90 days after enactment, institute a 5-business day waiting period for handgun purchases and ensure that the waiting period not expire until such time that an instant check system can be a reality.

This waiting period of 5 business days, in effect 1 week, would enable the local police to run a background check on gun purchasers.

In that time police can check criminal history records to see if the purchaser has a felony record.

In some instances they may be able to check local court records to see if the purchaser has been adjudicated mentally ill.

If the police found that the purchaser was prohibited by law from possessing a firearm, they would so notify the gun dealer, and the sale would not be made.

Every year over 12,000 people use handguns to take their own lives. And another 8,000 people are murdered by assailants armed with handguns.

People like Lt. Rick Gould of the Florence, SC, Police Department, who was shot and killed by a mentally disturbed man with a handgun purchased 7 hours earlier.

People like Greg Musick, who was shot and killed in a Georgia shopping mall by a man armed with a handgun. The gunman, who wounded four others in the shooting, had a felony record and bought the handgun the day before, just hours after his release from a State mental hospital.

These handgun shootings do not make history, like an attempt on the President's life. Some of them make headlines of local newspapers for a day or two, and are then all too quickly forgotten by most of the public.

When you cast your vote today, I urge my colleagues not to forget these innocent victims or their families.

The President and the Attorney General have been telling us they support creating an instant check system immediately.

That is not possible. The Senate settled that issue in the early hours this morning by rejecting the Stevens amendment.

I do not know where the administration stands now. The Attorney General has been on both sides of this issue.

I remember when Mr. Thornburgh testified before the Judiciary Committee at his confirmation hearing in 1988. At that time I asked him if he, as Attorney General, would support a 7-day waiting period. He replied, "We have a waiting period in Pennsylvania, as I told you, Senator, and I think it is an appropriate tool to utilize in giving law enforcement agencies the opportunity to maximize their chances of keeping these weapons out of the hands of individuals who show a propensity toward violent crime."

I then asked him directly, "Would you support the concept of a 1-week waiting period?"

And he replied, "Yes, yes."

Unfortunately after his confirmation by the Senate, the Attorney General reversed his position and has become the administration's leading opponent of the Brady bill.

As Mr. Thornburgh slowly clears out his desk at the Justice Department this summer and awaits an appeals court decision on whether there will be an election for him to run in this year, I hope, that when the Senate passes the Brady bill, he would live up to his 1988 promise and counsel the President to sign it into law.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I yield 5 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. President, I thank the majority leader for yielding.

Over the past few weeks I have been privileged to work with the distinguished majority leader and with my colleague from Wisconsin, Senator KOHL, to draft legislation that makes a real effort to keep handguns away from those who are already prevented by law from owning them, without compromising the legitimate rights of citi-

zens of this country who wish to own guns.

I would also like to take this opportunity to salute my colleague from Ohio, Mr. METZENBAUM, whose commitment to this issue and whose expertise and unwaivering diligence have made this bill a reality. And also the distinguished Republican leader, Senator DOLE, who has been engaged in discussions with the majority leader, Senator KOHL, Senator METZENBAUM, and myself for quite some time now, and it is those discussions which have resulted in the compromise that is now before the Senate.

It is already illegal for convicted criminals and those judged mentally ill by the courts to purchase handguns. Today we rely on the honor system to keep these dangerous weapons out of their hands. A criminal can walk in a store today, or someone who is a convicted felon, or seriously mentally ill, and take the official form, look at the question that asks about these things, and check the box marked "no," and then just walk out the door with a gun. This bill will stop that from happening.

Let me be clear I respect the rights of law-abiding gun owners. But this provision is designed to protect against the abuse of the right to have firearms by those who really should not have them.

In Tennessee we already have a 15-day waiting period and background check before a firearm can be purchased. Let me read you the Tennessee State law, Mr. President. It says that the sheriff of each county is instructed, the sheriff shall conduct a background investigation of the person and shall issue the directive and permit only if satisfied with the results of the investigation. And they have 15 days in which to do that.

I want to tell my colleagues here that the experience in Tennessee has been very favorable. Our waiting period works and, Tennessee law will become even more effective because this legislation will provide State officials with the resources they need to create the most up-to-date accurate system for conducting background checks on handgun purchasers.

Mr. President, technically when the amendment is laid down and then the question is put to the Senate, the immediate question will be on an amendment by the majority leader to strike from the Dole-Metzenbaum provision a preemption of a measure which would strike down all State laws like the one in Tennessee, and substitute the Federal provision. The amendment by the majority leader will strike that preemption provision of the Dole-Metzenbaum amendment.

I hope that the vote will be unanimous in striking that preemption clause. I feel like it will probably not be all that controversial I hope, because obviously a State like Tennessee that already has a 15-day waiting period ought to be able to decide for itself what powers its county sheriffs ought to have in protecting the citizens of that county. So, I hope and fully expect that the preemption measure in the amendment that will be offered by the Republican leader and Senator METZENBAUM will be struck out of the bill.

The underlying compromise amendment is really better and stronger and more effective in meeting the objectives of the advocates of the Brady bill and in meeting many of the objectives of those who with the National Rifle Association preferred an immediate background check.

It is truly amazing to me, I say this in all sincerity, Mr. President, that two points of view so far apart, or perceived to be so far apart, could come so close together in the amendment that will soon be offered because the waiting period is established in this, and then the measures are put in place to make possible the instant background check.

This is one of those rare occasions when the process which the Senate spends so much time on, small discussion groups, trying to figure out some way to satisfy the objections of people who feel strongly about provisions of legislation—we do this all the time and unfortunately it does not always lead to good results, sometimes we just get bogged down and nothing happens—and this time it has produced a result that is better than either of the two contending diametrically opposed positions with which we started. I think that it is a rare example of the Senate working its will in a way that is very productive in improving legislation in the process of discussing it.

Opponents said that the Brady bill was useless without a mandatory background check. Whether you agree with that or not, that has been corrected. Opponents said they wanted an instant background check. We came up with a bill with funds to help the States get their records in top shape and online so that the instant check can become a reality as soon as possible.

We now have a measure which ensures that until that system is in place a waiting period will remain in effect so that a check can be made with the records that are available.

In closing, Mr. President, violence in this country and violence with guns is a problem that must be addressed not next month, not next year, but now; and we have the opportunity to take meaningful action today.

With due compliments to my colleagues who worked so hard on this compromise measure, I urge every Member of this Senate, first of all to strike preemption, and then to support the amendment which will shortly be offered.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. I yield 5 minutes to the distinguished Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. I thank my colleague for yielding.

I hope all of us in this body will, for a moment, focus very clearly on what is before us. We are about to have an amendment laid down that has a waiting period. It has also an instantaneous background check. It also provides for Federal preemption for the purposes of uniformity in laws that, for years, many have argued is necessary if there is to be an attempt to keep firearms out of the hands of criminals.

Now, with all of those provisions within this amendment I think you will find it curious, as you listen to the debate this afternoon on it, to find that people are picking and choosing and, in fact, contradicting themselves in the debates they have made in recent days over this issue.

For example, just a few minutes ago, our colleague from Ohio who yesterday said that instantaneous background check was nothing but a lottery system waiting to happen is now, in fact, endorsing it and is the cosponsor of the measure.

Is that inconsistency? I suggest that it might be if, in fact, you argue one day that it will not work and the next day that it will work.

I was arguing yesterday, with respect to the Stevens amendment, that instantaneous background check, if properly implemented, would work. The question is the waiting period. The question is, Can you deny citizens of this country, for any purpose, what we have historically believed to be a constitutional right? And, if you do deny that even for a moment in time, that you might argue it was worth denying, will it work? Will, in fact, the criminal element of this country all line up at the local gun shop, abide by the law, fill out the forms and wait for the law enforcement area agents to find out that they are, first, in the vicinity and second, are trying to acquire a firearm? I suggest if this is put in place that will not happen.

Now it happens only in 1 out of 6 times, or 17 percent of the time. And it is argued that that is good enough to provide broad-based protection for the average citizen in this country when for a moment of time we are denying their constitutional right.

There is another provision that will be offered. It is my understanding that the majority leader will offer a provision to strike Federal preemption. Interestingly enough, over the last several days of debate on the crime bill we have selectively, on occasion, decided that we were either for or against Federal preemption.

You will hear on the floor tonight that no one should ever stand in the way of a State. Yet we all nearly voted

unanimously to support the D'Amato amendments, which were clearly Federal preemption over State authority in certain criminal areas.

I suggest the argument of Federal preemption is a selective argument. If it fits you, you wear it. If it does not, you declothe yourself of it and deny it should ever be put in place. And that is the debate that will go on this afternoon.

I suggest if we are truly looking for Federal uniformity, if we are looking to catch those who might traffic between States, or hop one border to another, then we really ought to assure the citizens of this country that that criminal element, who we attempt to snag by this law, will play the game unless the game is foolproof. This game will not be foolproof if we do not have uniformity across State lines.

Let me for the moment that is left to me talk about second amendment rights. I suspect 50 years ago this kind of debate would never have occurred in the Halls of the Congress; most assuredly not in the Chamber of the Senate. We would simply never have considered the idea that we would, for a moment in time, if not for all time, adjust or change what we believe to be the basic and fundamental rights of the citizens of this country. But that is what we are debating today, if not for a moment in time, for all time.

Will it work? Should we do it? If it works then we probably should do it. But the question is are we denying somebody a basic right?

We heard a colleague say a moment ago that over 8,000 people were killed last year by the use of a handgun. That is a statistic. That is a fact. I will not dispute it. But I will suggest this is another statistic and that is that 645,000 men and women in this country used a firearm last year to prevent themselves from being robbed, being raped or, in fact, having their homes broken into or their family in any way threatened. That is called the right of self-protection.

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

Mr. DOMENICI. Mr. President, I yield my colleague 2 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. CRAIG. I thank my colleague for yielding me 2 more minutes.

That is called the right of self-protection. That is what the amendment is all about. What is proposed will not work in the way it is offered.

If we could assure uniformity, I would seriously consider a blink, a moment in time when I would forget a constitutional second amendment right to assure that we could protect the citizens of this country by building an instantaneous background check in a way that would snag the criminal.

That will not happen. By definition it will not happen. In practicality, it will not happen. Because we simply will never get the criminal element of our country marching in lockstep to the tune of the law.

The criminal has said, by definition, if I cannot get a handgun, I will get a long gun. If I cannot get a gun, I will get a stick. But I will find a weapon to use for the purpose I have in the commission of a crime. That is reality.

If we want to play politics—and that is what we have chosen to do today—if you want to go home and say I am going to make the streets of America safer when in fact you will not by this action, then you must vote for it because that is the way you will say it.

The streets of America will not be safer tomorrow or next year by the passage of this law. That cannot happen until we toughen up on the criminal element, until the laws of this country recognize if you use a handgun in the commission of a crime, there is substantial penalty, and you will not plea bargain anybody back to the streets who perpetrate such an act.

That is the fundamental issue; that is the debate. That is the division we are talking about. We will now see a motion to strike preemption critical to this legislation.

Look at it in the package sense and also recognize that one works against the other.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MITCHELL. Mr. President, I yield 5 minutes to the Senator from Wisconsin.

I want to thank and commend the Senator from Wisconsin, one of the leaders in the effort to draft and gain enactment of this important legislation.

Mr. KOHL. Mr. President, I rise in strong support of the amendment I drafted with Senators MITCHELL, DOLE, and METZENBAUM. Once we dispose of the preemption language—and I am confident we will—this proposal will maintain the integrity of the Brady bill. And it represents a milestone: for the first time ever, the U.S. Senate is about to go on record in support of mandatory background checks for gun purchasers and in support of waiting periods.

Mr. President, our proposal takes the best elements of the Staggers amendment and the Brady bill. It is not a panacea for the violence in our cities and on our streets, but it is nevertheless an effective way of keeping guns out of the hands of criminals and drug traffickers. We need to pass this simple, effective, and straightforward measure—and defeat any efforts to weaken it—because it will help save lives.

The sad truth is that many of our cities are now less safe than war zones. From last August to this March, nearly 300 Americans died in the Persian Gulf. But during that very same period, more than 1,200 Americans were murdered in New York, more than 1,000 murdered in Los Angeles, and more than 300 murdered right here in our Nation's Capital.

Wisconsin is not immune to this gun-related violence. Last year my State set a record with more than 200 senseless killings. Most of those murdered were killed with guns, and many of the dead were children.

National statistics tell the same tragic story. According to the Department of Justice, more than 20 percent of all criminals obtain their handguns through licensed dealers, despite present Federal laws. Guns were responsible for over 10,000 murders last year, more than a 20-percent increase since 1987. And guns were used in more than 600,000 violent crimes in 1990.

In short, we need to find a better way to keep lethal weapons from dangerous people. The Brady bill works toward this goal. And in the amended form before you today, the measure will be even more effective.

Let me briefly describe our proposal. First, it would keep a waiting period in place. And waiting periods are crucial, Mr. President, to cool off individuals who are contemplating impulse killings or suicide. Do not take my word for it: every major law enforcement organization agrees.

Second, it would require that background checks are made, and we need to update our computerized criminal records so that these checks can be made more effectively. But through a system of incentives, this compromise would make background checks mandatory in every State. And it would give $100 million to States to update their criminal records—an improvement that is essential to accurately screen handgun buyers.

Mr. President, if we do not enact this proposal, what are the alternatives? Confiscating peoples firearms? That is wrong, unfair, and probably unconstitutional. Longer sentences? We have tried this for the last decade and, in any event, longer sentences are already replete in this bill. A national computerized instant check system? We defeated that last night.

Mr. President, our compromise has received the endorsements of Sarah and Jim Brady as well as every major police group. Moreover, it is supported by every living former President, including Ronald Reagan.

Why have all these people joined with us? And why do I believe our amendment will soon become law? The answer is simple: Our compromise combines the Brady bill with the NRA's proposal to effectively reduce handgun-related deaths. Waiting periods and mandatory background checks do work: Lives can and will be saved if we enact this measure.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. I yield 3 minutes to Senator CHAFEE and 7 minutes to Senator THURMOND when, in rotation, it is his turn.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I want to thank the distinguished Senator from New Mexico for yielding. Every so often in the Senate we see the results of actions by individual people pressing for the passage of legislation. I can recall the tremendous efforts that Peggy Barry, who lost a son in a fishing accident off Alaska and dedicated herself to achieving improved safety on American fishing vessels. She worked for many years on that and was finally successful. We see another example tonight coming to fruition: the work of Sarah and Jim Brady on this particular legislation. I think they are owed a tremendous debt of gratitude by all Americans, not just Americans now but Americans in the future and Americans who will live because of the results of this act.

Briefly, Mr. President, looking at the pluses, the pluses as it covers all firearms. It mandates background checks. It has a 5-business day wait. That is not 7 days, but it could well be 7 days since it is a 5-business day wait. It mandates that the States put in the automation of their criminal records and, as I say, it provides for background checks. It is not just a delay, a waiting period. It provides that during that waiting period there must be a background check on the individual.

What are the minuses? Mr. President, I think probably the principal minus is the preemption of States laws. I strongly believe there should be some period of delay, called a cooling off period, if you would, from the time that an individual comes in and wishes to purchase a handgun and the time that individual is able to purchase the handgun. It is not satisfactory, it is not adequate, in my judgment, just to have the automated criminal record check. A swift check, yes. This has probably 80 to 85 percent accuracy. That is splendid. You can tell if a person has a prior criminal record.

Mr. President, individuals come in in a fit of anger, rage—it might be a domestic matter—purchase a handgun, clearly has no criminal record and would be able to obtain that gun and go right out of the store and use it in a harmful way. So I think the mandated waiting period of some time, not as long as with the advent of the criminal record check. It would not have to be as long as 7 days, but I think some period, perhaps 48 hours, or something close thereto, is salutary.

So, Mr. President, I think overall the managers of the bill and the negotiators have done a very good job on this. It is not perfect, but certainly it is an excellent bill.

The PRESIDING OFFICER. The Senator from South Carolina is recognized for 7 minutes.

Mr. THURMOND. Mr. President, we are now considering provisions of the Violent Crime Control Act which provide for a 7-day waiting period for the purchase of handguns.

Perhaps no other title in this bill has been the subject of as much discussion and hyperbole in the media as the Brady bill language.

The proponents of this language suggest that enactment of this provision would prevent convicted felons from purchasing firearms from licensed dealers. They bolster their arguments with statistics, charts, and public opinion polls.

The opponents of this provision suggest that the Brady bill will not work, and more importantly, violates our second amendment right to bear arms. They feel criminals do not buy guns through legal channels. Furthermore, they argue that criminal history records in most States are not adquate to conduct effective background checks and scarce law enforcement resources will be diverted for this purpose. They, too, bolster their argument with statistics, charts, and public opinion polls.

There is room for belief and there is room for doubt on both sides of this issue. The polemics of gun control often produce heated debate and a tenacity to one's conviction on this issue.

Those representing both sides of this matter often use anecdotal persuasion to further their cause. These homilies on firearms generate much emotion and sympathy for the particular group offering their sermon. Clearly, empirical data is available to support both sides of this issue.

The progun control groups cite public opinion polls which show overwhelming support for the Brady bill. But the opponents also rely on surveys that show public opinion considerably waning when respondents are asked questions on the specific details and requirements of this proposal.

Both sides use interviews with law enforcement groups to buttress their argument. While one side refers to support by law enforcement for the Brady bill as an effective tool to keep guns from criminals, the other side quotes members of law enforcement who say the Brady bill would have no effect on criminals obtaining firearms.

As legislators, we must distill this conflicting information and find a workable solution that will prevent criminals from purchasing firearms from licensed dealers.

My support for the Constitution's second amendment right to bear arms is well documented during my service in the U.S. Senate. However, it could not be seriously argued that this is an absolute right which would allow convicted felons, other criminals and miscreants to own firearms.

There are currently Federal laws prohibiting the following categories of people from possessing firearms: First, any person convicted of a crime punishable by imprisonment for a term exceeding 1 year; second, a fugitive from justice; third, unlawful users of, or addicted to, controlled substances; fourth, those persons adjudicated as a mental defective or who have been committed to a mental institution; fifth, illegal aliens; sixth, those persons dishonorably discharged from the Armed Forces; and seventh, any U.S. citizen who has renounced his citizenship.

Title 27 in S. 1241 would require a 7-day waiting period before purchasing a firearm to allow law enforcement to conduct a background check on a prospective purchaser.

There has been considerable debate that complete records do not exist to do an adequate and effective check in 7 days. Of course, the ideal system would be an instant check and provide 100 percent arrest and disposition reporting. But, the available data tells us that the percentage is something less, and much more needs to be done to upgrade and automate these criminal records.

For example, the State of Virginia, which uses an instant background check has a relatively high level of disposition reporting at 85 percent. While there are a few States with better record quality than Virginia, there are many more States with worse. Clearly, the quality of the computerized criminal history records is critical in any type of background check on prospective purchasers.

According to the Bureau of Alcohol, Tobacco and Firearms, approximately 7.5 million new and used firearms are sold each year. Four out of seven guns sold are handguns. With this large number of guns sold annually, it is imperative that a system for background checks be able to accurately accommodate a large number of inquires on any given day.

The amendment now before us focuses on establishing a sound, responsive, and accurate system for an automated firearm purchaser record check. As I stated earlier, the quality of the criminal records is a determinative factor. An instant background check system is going to be effective only to the extent that there are accurate criminal records from which to draw.

Under this amendment, the Attorney General must take certain and definitive steps toward establishment of a national system to provide instantaneous checks for ineligible firearms purchasers. Additionally, funding is made available for the States to upgrade and fully automate their criminal history records. At a later time, the States will share their felony conviction records with the instant check system being setup by the Attorney

General. Two years after enactment of this legislation, the burden falls on the Attorney General to certify that the system is operational.

This instant check system will be used by licensed dealers to check the eligibility of purchasers of all firearms and no records of legitimate purchasers may be kept.

Mr. President, during the interim period before the instant check system is in place, this amendment provides for a 5-day waiting period prior to the purchase of any handgun. During this time, local law enforcement will use their available resources to conduct a background check.

This preapproval period could be helpful until the States upgrade and fully automate their systems under this amendment. The Office of Technology Assessment reports that most States have only partially automated criminal history files and few have complete disposition reports in these files. It is important for the States to improve their records to reflect the final disposition of those arrested within their borders. The funding authorized in this legislation will allow them to acheve this goal and help identify convicted felons who attempt to purchase firearms.

Mr. President, under this amendment, we will move in 2 years to a fully automated instant check system. I believe this will be most effective to identify and prohibit criminals from purchasing firearms from licensed dealers.

In the interim there will be a waiting period of 5 days for background checks on prospective gun purchasers. There has been some discussion that adoption of a waiting period would render a fatal blow to the second amendment. I am a strong supporter of the second amendment but do not share this fatalistic view. I do not believe that we will cross the Rubicon of gun control should the Congress adopt this amendment.

Mr. President, I believe this proposal is reasonable and offers an effective solution to achieve our goals. I urge my colleagues to support its adoption.

Mr. BIDEN. Mr. President, I yield myself 3 minutes on behalf of the majority leader.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, it seems to me this vote is very simple and very stark. Today, we strike a blow for common sense, for crime control, and for making the streets safer. It is as simple as that. Today, the Senate approves the Brady bill, a first rational, moderate step toward stopping killing in the streets. And today, with the passage of the Brady bill and the agreement not to strike any of the other bill's firearms provisions, we guarantee that the crime bill that passes the Senate will contain some sound anticrime measures. Of that we can be certain.

We will not finish the crime bill today, but today we move an important step closer toward getting a bill, a good, tough bill to make the streets safer, which is why we say we are fighting for a crime bill.

So, Mr. President, let us pass a tough crime bill. Let us pass the Brady bill. It is the least we owe American police officers. It is the least we owe the American people. And it is the most we will be able to immediately do to diminish the carnage in our streets.

I yield whatever time I have remaining back to the leadership.

A parliamentary inquiry. How much of the Senator's 3 minutes did I use?

The PRESIDING OFFICER. Two minutes.

Mr. BIDEN. Two minutes. I will not use the other minute. I yield it to the majority leader.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I think we have 3 minutes on the amendment, and I yield the 3 minutes to Senator STEVENS.

Mr. STEVENS. Mr. President, I spoke last night at length so I will not speak very long now. We started this process because the group associated with the Brady amendment believed that the current State laws which provide for registration, waiting periods, all kinds of restrictions on the purchase of guns do not work and we need a Federal law, they said, for a waiting period. That is what this bill started out to be, a waiting period.

Now we have a situation where my good friend from Delaware says this is the first step. This is the first step toward what? What is the second step? Is it to try to put into Federal law the registration provisions that do not work in the District of Columbia and in New York? What is it?

The thing that bothers me now is I understand that the preemption provisions of this current amendment will be knocked out. What will we have left? We have a Federal law that is going to apply to the States that do not have any waiting period until the System that I sought last night is proven to work—5 years under this bill, 2 years under mine. When that Federal System is working, the current States that do not have waiting periods once again will have no waiting periods, but the States that have 15, 20, 25 days, those waiting periods will prevail.

What this means to me is we are going to see now the Brady people will move to the States. This is nothing but a public relations gimmick when it comes right down to it. I think we are going to see an assault on the States so each one of the States then has a waiting period. Then we will be told the waiting periods of States do work so we can do away with the Federal waiting period after all. It is a very circuitous reasoning, Mr. President, in my opinion.

The real problem is—I agree with the Senator from Idaho—no matter what you say, this is tampering with second amendment rights. It is being done by people who want to take the first step down a long road to take away from our citizens the right to keep and bear arms.

I am sorry to say I cannot support the majority leader's amendment. I do not think it will achieve anything towards bringing about increased crime control. What it is going to do is present legitimate gun owners and sportsmen of this country with a whole series of new restrictions. No one has really mentioned to whom it will apply. It will not apply to me; my handguns are in Alaska, and I have had them a long time. This applies to the young people of this country. When they want to buy a gun, either for self-protection or sport, or perhaps they decide to go up to my State to hunt and fish and they want a handgun, they are going to face restrictions that I never faced.

The PRESIDING OFFICER. All the time under the control of the Republican leader has expired.

Mr. BIDEN. Mr. President, will the leader yield me 10 seconds? In response to my friend from Alaska, when he said the Senator from Delaware said this is the first step, the Senator meant and said this is the first step taken in this crime debate where we will be truly voting for something that will impact upon street crime, the first step in this bill. All the votes we have taken thus far will in no way directly impact on street crime. This will. That is what I meant by the first step.

Mr. MITCHELL. Mr. President, I yield 30 seconds to the Senator from Ohio.

The PRESIDING OFFICER (Mr. DECONCINI). The Senator from Ohio.

Mr. METZENBAUM. Mr. President, in moving forward with the passage of the Brady bill, we would not be where we are today were it not for the leadership of the majority leader, Senator MITCHELL, and the strong assistance of Senators KOHL and GORE. When things were bogged down and it looked as if it was going to be a touch-and-go situation as to whether we could pass the Brady bill, it was they who stepped into the breach, to come up with a compromise that was more acceptable to others. It could not have been done without Senator MITCHELL'S able leadership and the strong supporting positions of Senator GORE and Senator KOHL. Senator BIDEN, who is managing this bill, has done a herculean job. He has stood out here on the floor when things were going the roughest. Without him, none of us would be where we are today on this fine bill.

AMENDMENT NO. 503

Mr. DOLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself, Mr. METZENBAUM, Mr. MITCHELL, Mr. DOMENICI, Mr. KOHL, Mr. THURMOND, and Mr. GORE, proposes an amendment numbered 503.

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

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

The amendment is as follows:

On page 236, strike line 7 and all that follows through the end of the bill and insert the following:

TITLE XXVII—FELON FIREARM PURCHASE PREVENTION

SEC. 2701. FEDERAL FIREARMS LICENSEE REQUIRED TO CONDUCT CRIMINAL BACKGROUND CHECK BEFORE TRANSFER OF FIREARM TO NONLICENSEE.

(a) INTERIM PROVISION.—Section 922 of title 18, United States Code, as amended by section 702 of this Act, is amended by adding at the end the following new subsection:

"(u)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the date that the Attorney General certifies that the national instant criminal background check system is in compliance with section 2702(d)(1) of the Violent Crime Control Act of 1991 (except as provided as paragraphs (2) and (3) of section 2702(d) of such Act); it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 5 business days (as defined by days in which State offices are open) have elapsed from the date the transferee furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt for possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day peroid ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit that—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(D) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(E) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because of the inability of the transferor to communicate with the chief law enforcement officer because of the remote location and absence of telecommunication facilities in the remote location of the licensed premises.

"(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether the transferee has a criminal record or whether there is any other legal impediment to the transferee's receiving a handgun, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

"(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful use of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(4) The chief law enforcement officer of the place of residence of a prospective transferee of a handgun, at the request of a person who alleges the person requires access to a handgun because of a threat to the life of the person or a member of the household of the person, shall immediately meet with the person and forthwith sign a written statement described in paragraph (1)(B) unless the officer has clear and convincing evidence that no threat was made to the life of the person or any member of the household of the person.

"(5) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(6) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(7)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction.

"(B)(1) Unless the chief law enforcement officer to whom notice is provided under paragraph (1)(A)(i)(III) determines that a transaction shall, within 5 days after the date the transferee made such statement, destroy and record containing information derived from such statement.

"(ii) Information conveyed to a chief law enforcement officer under paragraph (1)(A)(i)(III)—

"(I) shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

"(II) shall not be used for any purpose other than to carry out this subsection.

"(8) A chief law enforcement officer shall not be liable in an action at law for damages for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section.

"(9) For purposes of this subsection, the term 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

"(10) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers and to the public.".

(b) PERMANENT PROVISION.—Section 922 of title 18, United States Code, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(v)(1) Beginning on the date that the Attorney General certifies that the national instant criminal background check system is in compliance with section 2702(d)(1) of the Violent Crime Control Act of 1991 (except as provided in paragraphs (2) and (3) of section 2702(d) of such Act), a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm from the business inventory of the licensee to any other person who is not such a licensee, unless—

"(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 2703 of the Felon Firearm Purchase Prevention Act of 1991; and

"(B) the system notifies the licensee that the system has not located any record that demonstrates that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section.

"(2) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

"(A) such other person presents to the licensee a valid permit or license, issued by the State or political subdivision thereof in which the transfer is to occur, that authorizes such other person to purchase, possess, or carry a firearm;

"(B) The Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(C) on application of the transferor, the Secretary has certified that compliance with paragraph (1)(A) is impracticable because of the inability of the transferor to communicate with the national instant criminal background check system because of the remote location and absence of telecommunication facilities in the remote location of the licenses premises.

"(3) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n), and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

"(4) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n), the Secretary may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under this section, and may impose on the licensee a civil fine of not more than $5,000.

"(5) A State employee responsible for providing information to the national instant criminal background check system shall not be liable in an action at law for damages for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section.".

(c) PENALTY.—Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking "(2) or (3)"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922 (u) or (v) shall be fined not more than $1,000, imprisoned for not more than 1 year, or both.".

SEC. 2702. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

(a) ESTABLISHMENT OF SYSTEM.—The Attorney General of the United States shall establish a national instant criminal background check system that any licensee may contact for information on whether receipt of a firearm by a prospective transferee thereof would violate section 922 (g) or (n) of title 18, United States Code.

(b) EXPEDITED ACTION BY THE ATTORNEY GENERAL.—The Attorney General shall expedite—

(1) the incorporation of State criminal history records into the Federal criminal records system maintained by the Federal Bureau of Investigation;

(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(c) PROVISION OF STATE CRIMINAL RECORDS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.—(1) Not later than 6 months after the date of enactment of this Act, the Attorney General shall—

(A) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems will communicate with the national system;

(B) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on line capacity basis to the national system;

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of the State timetable that the State achieve, by the end of 5 years after the date of enactment of this Act, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within the last 5 years and continue to maintain such a system.

(d) NATIONAL SYSTEM CERTIFICATION.—(1) On or after the date that is 30 months after the date of enactment of this Act, the Attorney General shall certify that—

(A) the national system has achieved at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within the last 5 years on a national average basis; and

(B) the States are in compliance with the timetable established pursuant to subsection (C).

(2) If on the date of certification in paragraph (1), a State that is not in compliance with the timetable established pursuant to subsection (c), the provision of section 922(u) of title 18, United States Code, as added by section 2701, shall remain in effect in such State. The Attorney General shall certify if a State subject to the provisions of section 922(u) under the preceding sentence achieves compliance with its timetable after the date of certification in paragraph (1) and section 922(u) of title 18, United States Code, as added by section 2701, shall not apply to such State.

(3) Six years after the date of enactment of this Act, the Attorney General shall certify whether or not a State is in compliance with subsection (c)(2) and if the State is not in compliance, the provisions of section 922(u) of title 18, United States Code, shall be in effect. The Attorney General shall certify if a State subject to the provisions of section 922(u) under the preceding sentence achieves compliance with the standards in subsection (c)(2) and section 922(u) of title 18, United States Code, as added by section 2701, shall not apply to such State.

(e) NOTIFICATION OF LICENSEES.—On establishment of the system under this section, the Attorney General shall notify each licensee of the existence and purpose of the system and the means to be used to contact the system.

(f) ADMINISTRATIVE PROVISIONS.—

(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION.—Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate section 922(g) or (n) of title 18, United States Code as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

(2) OTHER AUTHORITY.—The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION.—If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate section 922 (g) or (n) of title 18, United States Code, the transferee may request the Attorney General to provide such other person with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The transferee may submit to the Attorney General information that to correct, clarify, or supplement records of the system with respect to the transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to such the transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

(h) REGULATIONS.—After 90 days notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(i) PROHIBITIONS RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS.—No department, agency, officer, or employee of the United States may—

(1) require that any record or portion thereof maintained by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited by section 922(g) or (n) of title 18, United States Code, from receiving a firearm.

(j) DEFINITIONS.—As used in this section:

(1) LICENSEE.—The term "licensee" means a licensed importer, licensed manufacturer, or licensed dealer under section 923 of title 18, United States Code.

(2) OTHER TERMS.—The terms "firearm", "licensed importer", "licensed manufacturer", and "licensed dealer" have the meanings stated in section 921(a) (3), (9), (10), and (11), respectively, of title 18, United States Code.

SEC. 2703. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS.

(a) IMPROVEMENTS IN STATE RECORDS.—

(1) USE OF FORMULA GRANTS.—Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(1) in paragraph (2) by striking "and" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(4) the improvement of State record systems and the sharing of all of the records de-

scribed in paragraphs (1), (2), and (3) and the records required by the Attorney General under section 3 of the Felon Firearm Purchase Prevention Act of 1991 with the Attorney General for the purpose of implementing the Felon Firearm Purchase Prevention Act of 1991.".

(2) ADDITIONAL FUNDING.—

(A) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS.—The Attorney General shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

(i) for the creation of a computerized criminal history record system or improvement of an existing system;

(ii) to improve accessibility to the national instant criminal background system; and

(iii) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subparagraph (A) a total of $100,000,000 for fiscal year 1992 and all fiscal years thereafter.

(b) WITHHOLDING STATE FUNDS.—Effective on the date of enactment of this Act the Attorney General may reduce by up to 50 percent the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 of a State that is not in compliance with the timetable established for such State under section 2702(c).

(c) WITHHOLDING OF DEPARTMENT OF JUSTICE FUNDS.—If the Attorney General does not certify the national instant criminal background check system pursuant to section 2702(d)(1) by—

(1) 30 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal beginning in the calendar year that is 30 months after the date of enactment of this Act shall be reduced by 5 percent on a monthly basis; and

(2) 42 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal beginning in the calendar year that is 42 months after the date of enactment of this Act shall be reduced by 10 percent on a monthly basis.

(d) If, beginning 5 years after the date of this enactment, the Attorney General certifies all States are in compliance with section 2702(d), all State laws requiring a waiting period for the purchase of firearms are preempted by the provisions of this title.

Mr. DOLE. Mr. President this amendment has been checked by staff on both sides, and by Members to some extent. We think it is satisfactory.

AMENDMENT NO. 504 TO AMENDMENT NO. 503

Mr. MITCHELL. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL] proposes an amendment numbered 504 to amendment numbered 503.

On page 18 of the amendment strike all after line 13.

Mr. DURENBERGER. Mr. President, I will support the compromise Dole-Metzenbaum amendment, but only if we approve the majority leader's amendment striking the portion of the amendment that preempts State handgun laws.

Mr. President, last night I expressed my views on why I oppose a national handgun waiting period. In my view, a national waiting period, whether it be 5 days or 7 days, will not prevent criminals from obtaining handguns because the vast majority of criminals do not need and use ordinary and legitimate commercial means to obtain weapons.

Five out of six criminals obtain their handguns illegally. Everyone agrees with that fact. Criminals buy in the black market, they break in the gun stores, they steal guns from the homes of law-abiding citizens. Or they purchase guns from individuals with no prior criminal records who have legally purchased handguns through licensed gun dealers. Nothing we do on the Senate floor will change this fact.

However, Mr. President, if the majority leader's amendment striking Federal preemption is agreed to, I will support the compromise because the compromise increases from $40 to $100 million the amount of money that the Federal Government will provide to the States in order to establish a national computerized instant check system. However, I will not support this compromise if the final version preempts State handgun laws.

Mr. President, I believe there is no justification for the preemption provision contained in this bill. I have not heard a single argument to justify this unnecessary intrusion by the Federal Government into an area that has traditionally been within the purview of State and local governments.

Mr. President, in some parts of our country, especially in some of the major metropolitan areas, local police have found crime so overwhelming and pervasive that they have sought the enactment of State laws restricting gun ownership. In most cases, these laws have not served as a panacea for crime. But they reflect the feelings and frustrations of the local citizenry and local law enforcement.

Currently 26 of the 50 States have adopted waiting period laws and permit-to-purchase laws. Some of these waiting periods are as short as 2 days, others as long as 15 days. In my own State of Minnesota, the waiting period is 7 days. In 24 States, the State legislatures have expressed their view that waiting periods to purchase handguns are unnecessary.

Mr. President, I see no reason that there should be one uniform law governing handgun purchases in America. Can anyone in this body tell me that the police in the South Bronx of New York, or in Detroit MI, cope with the same problems as the State police in Wyoming or the local police in Bemiji MN. Of course not. Economic and social conditions in many of our cities demand firearms rules that are vastly different from the rules that govern small communities and sparsely populated States.

Mr. President, I will reluctantly vote for the Brady bill compromise that has been arduously worked out between the leadership on both sides of the aisle, along with proponents and opponents of a national waiting period.

I will do so with a sense of relief that the best interests as well as the major concerns of both sides have been met in my opinion.

I will do so with a real special sense of gratitude to my friend Jim Brady and his incredible wife Sarah for making sure we close this 23-year-old hole in guns law of this country.

Mr. SIMPSON. I want to make it clear for the record that we are really discussing two issues here today. One relates to whether or not waiting periods are ever advisable. The other relates to whether the Federal Government can reduce the length of the various existing State waiting periods through its power of preemption.

I rise in support of the amendment by our fine minority leader concerning the concept of preemption. I oppose the motion by the majority leader to strike the provision regarding preemption of State waiting periods.

The Federal Government should never—in my view—preempt State laws without strong and compelling reasons to do so. When we preempt, we wipe out a State law—erase it—nullify it. We substitute our judgment for the decisions made by the duly elected representatives of State government. When we preempt, we are, indeed, big brother. The people of Wyoming do not like that, and I do not, either. Only in most rare and extreme circumstances should we exercise that awesome Federal power over the States.

In this case, I think we have a strong and compelling reason to do so. Without preemption in this amendment, we are allowing even more intrusive State laws to add to the damage done to the second amendment today.

Mr. President, I also oppose all waiting periods. I do not think any waiting period will work—I do not believe it can work. The waiting period in the underlying bill can never work.

However, there are States like Massachusetts and California with laws that are far more intrusive than even this legislation. We must do all we can at every level to avoid destroying the second amendment rights of American citizens altogether. But we simply do not have the votes to protect that amendment as we should.

This is a sad day for the Constitution. The Framers, I suspect, would not be proud of the U.S. Senate if they were watching today, because in this so-called crime bill, we are now trying to amend a section which clearly ig-

nores the spirit of the second amendment.

I am saddened by the double standard of some of our colleagues.

I was heartened to hear the distinguished chairman of the Judiciary Committee early this week, during debate on the exclusionary rule, when he said: "We can't change an amendment to the Constitution—even a little bit—we can't do that". Of course, there the chairman was using that as an example to argue against an amendment changing the law on the fourth amendment. The fourth amendment, and its protections for criminals, is obviously more sacred than the second to most of my colleagues.

But now, we are pretending that the second amendment does not exist. I wonder where the reverence is for the Bill of Rights—the reverence displayed on this floor just 4 days ago—where is it now?

The proponents have turned a crime bill debate into a debate on gun control. We owe it to our costituents to be very honest here. The waiting period will do nothing to curb violent crime. Criminals who are naive enough to go to a gun store to buy a firearm are at least smart enough to lie about their identity. In reality, though, this Brady bill concept will do nothing more than send these types out into the streets to buy firearms from other criminals. They will then just pay a higher price and exact a higher price from their future victims to make up the dfference.

The original Brady bill was misguided.

The idea of a waiting period—whether 7 days, 5 days, or 5 years, really does nothing at all to prevent the criminal from obtaining a firearm.

We were defeated last night when we tried to offer a realistic and sensible proposal as a substitute—one which respected the Constitution and the rights of law-abiding citizens.

The proponents of national gun control proved to us last night that we do not have the votes to protect the second amendment in the U.S. Senate. Those votes just are not there. We can leave it to the American people to decide whether they want to correct that situation in the future—at the ballot box.

The Dole language does constitute an appropriate improvement. However, it still imposes the distasteful waiting periods and I must therefore oppose it.

This bill will now go to conferfence. I would hope to be a conferee. In that conference, I would do all that is possible to further improve this legislation and still respect the rights that our Founding Fathers envisioned in the second amendment.

I richly commend our fine leader—the Senator from Kansas—for his courage in going forward with this compromise. He is tireless and sincere. His is a great improvement over what is now in the bill. I know he has labored long and hard with the best of faith. This has been very difficult and trying for me not to join him in his effort, but he has shown true leadership. That is his essence.

Mr. MITCHELL addressed the Chair.

Mr. DOLE. We are prepared to vote on the amendment.

Mr. MITCHELL. We are prepared to vote on the pending amendment, and then I ask that for the time I have remaining to make remarks I be permitted to make them after the adoption of this amendment.

Mr. STEVENS. Will there be a rollcall vote on the amendment?

Mr. DOLE. If someone requests a rollcall, there will be.

Mr. STEVENS. With preemption shut out, all of us who support the second amendment will oppose the Dole amendment. So I will not ask for a rollcall vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the second degree, offered by the Senator from Maine.

The amendment (No. 504) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I urge my colleagues to vote for the compromise handgun control amendment to the crime bill.

In place of a vague discretionary law which would permit an attorney general to put a background check into effect simply at his own discretion, this provision contains concrete and serious standards that must exist before such a system can be pronounced operational.

The Brady legislation that was passed by the House contained no such standards—in fact, it contained nothing that would have led to the creation of a national checking system.

That was a major flaw in that legislation and the modification now before us corrects it in a sensible and achievable way.

The modification also contains a time provision which, in the opinions of some, reflects the time that such a system can be put into effect.

But to make absolutely certain that no system goes into effect unless it is, in fact, a national and accurate checking system, our modification provides for a retriggering of the waiting period for any State which fails to meet the national records standards.

There are two checkpoints in the life of this legislation which are both important.

One comes in 2½ years time. At that time, 2½ years after enactment, the Attorney General will review the situation as it exists with respect to national records, State records and the operational capacities of the national checking system, and if he finds that they meet the standards set forth in the bill, he will certify the system operational.

At that time, the waiting period would end in those States covered by this bill—States which do not now have their own waiting period or checking system under state law.

The other checkpoint under this bill comes 6 years after enactment when the national goal for every State is reviewed.

The national goal is to achieve a criminal record system which is full and accurate and up to date. If any State, at that time, has not met the standard, the waiting period is reimposed in that State.

This is a moderate, sensible proposal that will achieve what both the opposing sides identify as their common goal: Preventing legal handgun sales to convicted felons.

That is a goal each side has tried to reach by different means.

The supporters of a handgun purchase waiting period and the opponents of a handgun purchase waiting period agree that their goal is to keep handguns out of the hands of convicted felons.

I know of no Senator who disagrees with that goal.

Both sides agree that to do so, a background check of handgun purchasers is needed.

I know of no Senator who disputes that fact.

Our proposal therefore seeks to achieve that common goal. It does so more effectively than either side's competing proposal does, standing alone.

The Brady proposal, as passed in the House, provides for a waiting period, with no background check necessary, in those States which do not now have a waiting period or a background check—that is some 29 States in all. The Brady proposal rests on the hope that a background check will be done, but the actual language of the bill contains nothing to further that hope.

It does nothing to ensure that the criminal records which would have to be checked will be either current or complete.

As a result, the proposal imposes a wait—in many cases on States which have already affirmatively considered and rejected the idea—and then implicitly hopes something will come of it.

The Senate turned down a similar 14-day wait by a 2-to-1 margin several years ago.

Our proposal seeks to correct those shortcomings.

It provides resources to the States for both the costs of conducting a background check and of updating and automating State criminal history records, so that a background check

will have a reasonable probability of accurately determining a buyer's right to purchase.

The proposal does not meet all the objections of both sides.

The National Rifle Association has criticized it because it contains no absolute deadline to end the waiting period when a national instant check system is in place. They suggest that the lack of a deadline implies an indefinite duration for a waiting period. They criticize it because it will not lead to a single national law governing handgun sales, but perpetuates the existing differences in state laws.

Supporters of the Brady bill oppose the fact that our provisions will speed up the point-of-sale check system so that the waiting period will end sooner rather than later in States that do not want to have a waiting period. They would like to see less emphasis on the check and more emphasis on the wait.

But our proposal is not designed to meet the specifications of either side. Instead, it is designed with the concerns of the public at large, the State authorities and the Federal criminal justice system in mind.

The people of this Nation are concerned and angry about random gun violence. They are asking for more effective laws to curb it.

This proposal is not a total response to that demand. But it is a prudent, sensible measure that will help reduce that random violence.

The States do not all have the ability to check out handgun buyers today, and not all of them want to divert the police resources to take up that new task, especially States where gun-related crime rates are low.

The Federal authorities are required by the 1988 drug bill to put into place some kind of checking system, but today lack the authority to compel State cooperation in setting up the record system needed to support a national check.

And, not least, common sense says that if we are going to ask people to wait for 7 days to receive a gun they wish to buy, that we ought to use the time delay to do something more than inconvenience the buyer.

In other words, if we are going to require a wait, we ought to do a check during that wait; if we are going to do a check, we ought to make sure the records checked are reasonably accurate and updated.

And if we are going to make this a national policy, we have to do something to make sure the records involved are national in scope.

That is what our proposal seeks to do. It does not fully satisfy either side: But it does meet what both claim as their goal more fully and more quickly than do either of their competing proposals.

The principal purpose of this proposal is to help keep handguns out of the hands of felons.

The Brady proposal provides that when a national background check system is in place, the waiting period will end. The purpose of the waiting period, in other words, is to allow time for the check to be done. But the Brady proposal does not require a check to be done.

The approach supported by the National Rifle Association sought to impose the solution of an instant phone check, but it did not take into account the practicalities of time or resources to reach that solution.

Standing alone, neither approach would have been effective.

Current law requires the Attorney General to establish a method of making effective background checks on handgun buyers. But current law leaves the process—its pace and its standards—to the Attorney General's discretion.

The Justice Department has announced that a national, telephone background check will be the system used to respond to that law. But the Department has not said when such a system will be in place, what it considers to be adequate national coverage, or what the role of the States will be.

Our proposal seeks to resolve those questions.

It gives the States the resources to conduct a background check while the criminal records are being improved.

It gives the States the resources and the incentives to steadily improve those records.

And it provides incentives for the Justice Department to make a good faith effort to establish a workable system in as short a time period as is compatible with a comprehensive and accurate system.

Only 21 States today share their criminal data with the FBI system. For a national check to be truly national, all the States' records must be accessible through a central system.

Our proposal seeks to ensure that when a criminal background check is conducted, the records that will be consulted will be reasonably complete and current.

Today, in many States, reasonably complete and current records are not readily available.

A great deal of emotion and rhetoric always fuel debates over firearms. That has been the case in this instance.

Supporters of the Brady bill approach argue that the use of firearms in crimes and accidental killings is too high a price to pay for unrestricted access to handguns, and that at least those persons who are by law already prohibited from owning a handgun ought to be prevented from easily buying one.

Supporters of the National Rifle Association argue that the vast majority of all guns, including handguns, are purchased and owned by law-abiding citizens, whose rights ought not be infringed because of a very small minority of criminals.

Emotional arguments and controversy do not arise when one side is completely in the right and the other is completely in the wrong.

Controversy arises precisely when there is some truth on both sides of an issue.

That is the case here.

Supporters of a waiting period are right to say that the easy accessibility of handguns may contribute to crime and accidents. They make a fair argument in saying that a brief waiting period is a reasonable accommodation to a serious social problem.

The National Rifle Association and its supporters are right to remind us that the overwhelming majority of American gun owners are not criminals. They are law-abiding citizens whose ownership of firearms poses no threat to anyone.

Controversy also arises when exaggerated claims and misleading rhetoric is used. That has also happened on this issue.

Some supporters of a waiting period approach have implied that it is a panacea for firearms violence. That is just not true.

No waiting period is going to keep handguns from the hands of the mentally incompetent or unstable or drug addicts, because our society does not maintain readily available lists of persons with mental instabilities or addictions.

Meantime, some opponents of a waiting period have suggested that even the most minor inconvenience to a handgun purchaser is a constitutional violation and the first step to firearms confiscation. That is not true either. Our Nation has had laws governing firearms sales for well over half a century and there is no indication that the right of law-abiding persons to purchase firearms is any more at risk today than it was 50 or 100 years ago.

We have just ended a highway bill debate in which it sometimes seemed that we lost sight of the fact that our Nation is diverse, that some States are geographically large with small populations, that others are relatively small in size with large populations.

On this issue, which is a very different one, we face the same underlying situation: A diverse nation in which some Americans experience the freedom and peace of mind that comes in a rural setting, where guns pose no particular threat; and other Americans live in concentrated urban populations, where guns represent a very present danger.

I don't think we can or should tell either of our populations that their concerns do not matter. We cannot turn our backs to the fact that citizens in our larger cities are frightened by the easy availability of firearms. But we cannot and should not ask our rural

people to live for all time under a regime geared to the needs and fears of urban residents.

There is a middle way where both sides can acknowledge the legitimate concerns of the other and accommodate to them. That is what our proposal is designed to do. We are asking residents of both rural and urban America to recognize that they are all part of the same nation. What is a problem for some of them for some of the time is important to others, and vice versa.

That is what I think Senators should do. Almost all of us have both rural and urban constituencies. We have to accommodate the differences in those constituencies and we ought to do it by asking both sides to recognize the concerns of the other.

The people we represent are more important than either the media pressures or the competing demands of the lobbying groups involved here.

I believe we have developed the least intrusive way feasible of meeting a common goal. The fact that we do not have agreement on the means to get there reflects differences that our proposal acknowledges and seeks to deal with by asking both sides for patience over time.

It is a reasonable, responsible proposal and deserves the support of all Members.

This is a very effective proposal. It includes a national background check system that is put in place. It includes a mandatory background check on purchases of handguns. It provides Federal resources to the States to build the instant check system. Incentives and disincentives for the State and Justice Department are included to bring the program up to speed at the earliest feasible time. There are defined standards that must be certified before the waiting period is phased out and a fail-safe mechanism that reimposes the waiting period if any State fails to meet and maintain the requirements of a current instant check system.

Now with the adoption of the amendment just voted on, there is no preemption of the rights of those States who on their own have selected to adopt waiting periods and background checks.

Mr. President, I want to thank all of those who have been involved; Senator DOLE, who has been involved with the negotiations in this with me for several days; Senator METZENBAUM, who has led this fight for 4 years, and without whose effort and persistence we would not be here today; Senator GORE and Senator KOHL, who joined with me earlier to participate in this; Senator BIDEN and many others. This is a group effort. It is a good effort.

I urge all Senators to vote for this proposal.

The PRESIDING OFFICER. All time has expired.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The question is on the amendment.

Mr. MITCHELL. I ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that after the vote I be recognized for 2 minutes.

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

The question is on agreeing to the amendment of the Senator from Kansas.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

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

The result was announced—yeas 67, nays 32, as follows:

[Rollcall Vote No. 115 Leg.]

YEAS—67

Adams	Exon	Mitchell
Akaka	Ford	Moynihan
Bentsen	Fowler	Nunn
Biden	Glenn	Packwood
Bingaman	Gore	Pell
Boren	Gorton	Reid
Bradley	Graham	Riegle
Bryan	Harkin	Robb
Bumpers	Hatfield	Rockefeller
Burdick	Inouye	Roth
Byrd	Jeffords	Rudman
Chafee	Kassebaum	Sanford
Coats	Kasten	Sarbanes
Cohen	Kennedy	Sasser
Conrad	Kerrey	Seymour
Cranston	Kerry	Simon
D'Amato	Kohl	Thurmond
Daschle	Lautenberg	Warner
Dixon	Levin	Wellstone
Dodd	Lieberman	Wirth
Dole	Lugar	Wofford
Domenici	Metzenbaum	
Durenberger	Mikulski	

NAYS—32

Baucus	Grassley	Murkowski
Bond	Hatch	Nickles
Breaux	Heflin	Pressler
Brown	Helms	Shelby
Burns	Hollings	Simpson
Cochran	Johnston	Smith
Craig	Leahy	Specter
Danforth	Lott	Stevens
DeConcini	Mack	Symms
Garn	McCain	Wallop
Gramm	McConnell	

NOT VOTING—1

Pryor

So, the amendment (No. 503) as amended, was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment, as amended, was agreed to.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I believe under the previous order the distinguished Republican leader was to be recognized for 2 minutes.

The PRESIDING OFFICER. The Republican leader is recognized for 2 minutes.

Mr. DOLE. Mr. President, I will not take 2 minutes just to thank all my colleagues on each side, those who supported and those who finally opposed the compromise. I think it is an improvement. I think because of the discussions we had with those on both sides of the issue, we ended up with a stronger position on gun control, or on whatever you may call it. I think it is the right decision and I hope we can prevail, that this view will prevail, or we can even do better when this matter goes to conference.

I thank the distinguished majority leader and others, and the distinguished Senator from Idaho who was one of the leaders in the group who met in my office for days, along with Senator STEVENS of Alaska, Senator HATCH, Senator SYMMS of Idaho, and others who spent a great deal of time trying to come to grips with this very important issue.

I yield the remainder of my time.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I want to add my thanks to all of those who participated in making this very significant vote possible. A strong majority of the Senate has demonstrated their deep concern for dealing with the problem of violence in our society.

Mr. President, Senators involved played important roles, but I think each of us will acknowledge that it was the tremendous support, knowledge, effort, and dedication of key staff in the drafting of legislation and the conduct of extensive negotiations, often in very long nights, that made it possible. I do not know and cannot mention all of them, but I do want to mention some who have played an important role.

John Leibowitz of Senator KOHL's staff, Leeann Brackett of Senator GORE's staff, Kevin Burtzlaff, and Bill Corr of Senator METZENBAUM's staff, Jim Whittinghill of Senator DOLE's staff and, last but surely not least, Anita Jensen of my staff, who devoted literally hundreds of hours to this effort. All of them are to be commended. All of them played a very significant role in the achievement reached here in the Senate today.

I thank all of them. I want also, again, to thank the distinguished Senator from Delaware [Mr. BIDEN] and Ron Klain of his staff, who were fully supportive throughout this process and have pursued the crime bill itself with such diligence and skill.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

JUSTICE THURGOOD MARSHALL AND THE CIVIL RIGHTS ACT

Mr. BRADLEY. Mr. President, yesterday, after 24 years of distinguished service, Justice Thurgood Marshall announced his retirement as Associate Justice of the Supreme Court of the United States. That announcement ends the formal career of a man who has guided, shaped, and led the moral conscience of this Nation for half a century. His retirement marks the end of a career dedicated to the advancement of civil rights for this Nation and the advancement of human rights for the world. For the rights he promoted, for the causes he championed, and for the Nation he served, we as a people have suffered a moral loss.

But that was not the only moral loss yesterday. Justice Marshall's announcement preceded by a matter of hours the announcement of the Senator from Missouri from the Senate that his attempt to negotiate a compromise on the pending civil rights negotiation with the President had failed. Apparently we are condemned to a long, hot summer of racial politics, and that is a significant moral loss for the Nation as well.

I appreciate and commend the efforts of Senator DANFORTH to put partisan interests aside in recognition that civil rights for Americans deserves discussion on a higher level. The sincerity of his beliefs on this bill is beyond question.

We should remember it was the White House that broke off talks. And why? Because it appears the President is being successful in his attempt to make quotas the Willie Horton poster child of the 1992 election cycle.

The Wall Street Journal reports this morning that 50 percent of all voters believe the Democratic Party backs quotas, while only 14 percent believe it does not. By contrast, voters view the Republican Party as antiquota by 47 percent to 18 percent. This view of Democrats is not true, but that is what the people seem to believe for now.

So, well done, Mr. President. You have clearly achieved your goal on this bill. You have convinced people of what is not true.

Let me say to the President, there is a higher road to take on this issue. There are loftier goals that could be set. You could, Mr. President, support the compromise efforts in this body on the civil rights bill. So far this has been, for you, the road not taken.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

VIOLENT CRIME CONTROL ACT

The Senate continued with the consideration of the bill.

AMENDMENTS NOS. 505, 506, 507, 508, 509

Mr. FOWLER. Mr. President, I ask unanimous consent it be in order for the Senate to proceed en bloc to the consideration of the amendments I now send to the desk; that the amendments be agreed to en bloc and the motions to reconsider be laid upon the table.

Mr. STEVENS. Reserving the right to object, what is this?

Mr. FOWLER. I will be glad to repeat it for the Senator from Alaska.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator to consider the amendment at the desk en bloc?

Without objection, it is so ordered. The amendments will be stated.

The legislative clerk read as follows:

The Senator from Georgia [Mr. FOWLER], for Mr. BIDEN, proposes an amendment numbered 505.

The Senator from Georgia [Mr. FOWLER], for Mr. PRYOR, proposes an amendment numbered 506.

The Senator from Georgia [Mr. FOWLER], for Mr. KENNEDY, for himself, and Mr. HATCH, proposes an amendment numbered 507.

The Senator from Georgia [Mr. FOWLER], for Mr. GRAHAM, proposes an amendment numbered 508.

The Senator from Georgia [Mr. FOWLER], proposes an amendment numbered 509.

Mr. FOWLER. Mr. President, the five amendments before the Senate are as follows. They were cleared by the other side.

A credit card fraud amendment by the chairman of the committee [Mr. BIDEN]; an amendment dealing with preventing wire tapping, which was offered by the chairman for the Senator from Arkansas [Mr. PRYOR]; an amendment jointly authored by Mr. KENNEDY and Mr. HATCH on art theft; an amendment by Mr. GRAHAM, of Florida, on judicial vacancies; an amendment by Senator FOWLER, of Georgia, on police corps.

The PRESIDING OFFICER. Without objection, the amendments will be agreed to en block as requested by the Senator from Georgia.

The amendments were agreed to, en bloc, as follows:

AMENDMENT NO. 505

At the appropriate place, insert the following:

SEC. . CONSUMER PROTECTION AGAINST CREDIT CARD FRAUD ACT OF 1991.

(a) SHORT TITLE.—This section may be cited as the "Consumer Protection Against Credit Card Fraud Act of 1991".

(b) FRAUD AND RELATED ACTIVITY IN CONNECTION WITH ACCESS DEVICES.—Section 1029 of title 18, United States Code, is amended—

(1) in subsection (a) by inserting after paragraph

(4) the following new paragraphs:

"(5) knowingly and with intent to defraud effects transactions, with one or more access devices issued to another person or persons, to receive payment or any other thing of value during any one-year period the aggregate value of which is equal to or greater than $1,000;

"(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of—

"(A) offering an access device; or

"(B) selling information regarding or an application to obtain an access device; or

"(7) without the authorization of the credit card system member or its agent, knowingly and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, one or more evidences or records of transactions made by an access device;".

(c) TECHNICAL AMENDMENTS.—Section 1029 of title 18, United States Code, as amended by subsection (b), is amended—

(1) in subsection (a) by striking "or" at the end of paragraph (3);

(2) in subsection (c)(1) by striking "(a)(2) or (a)(3)" and inserting "(a)(2), (3), (5), (6), or (7)"; and

(3) in subsection (e) by—

(A) striking "and" at the end of paragraph (5);

(B) adding "and" at the end of paragraph (6); and

(C) adding at the end thereof the following new paragraph:

"(7) the term 'credit card system member' means a financial institution or other entity that is a member of a credit card system, including an entity, whether affiliated with or identical to the credit card issuer, that is the sole member of a credit card system.".

AMENDMENT NO. 506

(a) Section 2511(1) of Title 18 is amended—

(1) by striking "or" at the end of paragraph (c);

(2) by inserting "or" after the semicolon at the end of paragraph (d); and

(3) by adding the following new paragraph:

"(e)(i) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by sections 2511(2)(a)(ii), 2511(b)-(c), 2511(e), 2516, and 2518 of this subchapter, (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a criminal investigation, (iv) with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation;"

(b) Section 2515 of Title 18 is amended by adding at the end the following new paragraph:

"This section shall not apply to the admission into evidence of the contents of a wire or oral communication, or evidence derived therefrom, which has been disclosed in violation of Section 2511(1)(e)."

Mr BIDEN. Mr. President, I ask unanimous consent that a letter to me from Senator PRYOR concerning the wiretap amendment he and I worked on be printed in the RECORD at the appropriate place.

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

U.S. SENATE,
Washington, DC, June 27, 1991.

Hon. JOSEPH BIDEN,
Chairman, Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR JOE: I am writing to thank you for securing inclusion of my wiretap proposal in

this year's crime bill. I know that you supported my proposal in the 101st Congress, and I greatly appreciate your courtesy in assisting its passage again this year. As I am continuing my recovery from a recent heart attack, I am unable to participate in the current debate regarding the "Violent Crime Control Act of 1991".

My interest in reforming the federal wiretap statute can be traced to the Impeachment Trial of former Judge Alcee Hastings in 1989. During the course of those proceedings, it came to my attention that several loopholes exist in the current federal wiretap statute. Specifically, the statute fails to prohibit unauthorized disclosure of lawfully obtained wiretap information (1) by private persons or government officials who work for nonlaw enforcement agencies (e.g., judges, court personnel) or (2) made for reasons other than obstructing interception of a particular conversation or communication (e.g., exposing an undercover investigation). My proposal will close these loopholes by prohibiting improper disclosure of lawfully obtained wiretap information by any person for the general purpose of obstructing a criminal investigation.

As you know, undercover criminal investigations which employ wiretaps are often very sensitive operations that place at risk the lives of law enforcement officers. Those officers have the right to know that prosecutors will have clear statutory authority under which to bring charges against any individual who intentionally discloses confidential wiretap information and thereby jeopardizes the officers' lives. I believe my wiretap proposal gives those officers the assurance they deserve. Mr. Chairman, we must send a clear message that the unauthorized disclosure of confidential wiretap information is dangerous to law enforcement officers and will meet with harsh punishment.

Your assistance and cooperation regarding this matter are greatly appreciated.

Sincerely,

DAVID PRYOR.

AMENDMENT NO. 507

At the appropriate place, insert the following:

SEC. . THEFTS OF MAJOR ART WORKS.

(a) OFFENSE.—Chapet 31 of title 18, United States Code, is amended by adding at the end thereof the following:

"§668. Theft of a major art work

"(a) Whoever steals or obtains by fraud any object of cultural heritage held in a museum shall be fined under this title, imprisoned not more than the maximum term of imprisonment for a class C felony, or both.

"(b) A museum which exhibits to the public or holds in storage any stolen object of cultural heritage knowing such object is stolen shall be fined under this title, imprisoned not more than the maximum term of imprisonment for a class C felony, or both.

"(c) Notwithstanding section 3282 of this title, the statute of limitations for an offense under this section shall be 20 years.

"(d) The property of a person convicted of an offense under this section shall be subject to criminal forfeiture under section 982 of this title.

"(e) For purposes of this section—

"(1) The term 'museum' means an organized and permanent institution, essentially educational or aesthetic in purpose with professional staff, which owns and utilizes tangible objects, cares for them, and exhibits them to the public on some regularly scheduled period.

"(2) The term 'stolen object of cultural heritage' means a stoler object reported to law enforcement authorities as stolen and registered with the International Foundation for Art Research, Smith International Adjustors, or any equivalent registry.".

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 31 of title 18, United States Code, is amended by adding at the end thereof the following:

"668. Theft of a major art work.".

AMENDMENT NO. 507

Mr. KENNEDY. Mr. President, I offer this amendment with my colleague from Utah, Mr. HATCH, to respond to the growing number of major art thefts in this country and abroad, many of which have had serious impacts on the public and the arts. Ninety percent of stolen art is never recovered; however, 40 percent of well-known works are recovered because the notoriety of the theft makes the works difficult to sell or even display.

Stolen works of art are often irreplaceable. As a result, museums are forced to undertake expensive measures to protect their treasures, and the burden is equally great on smaller and less established museums and galleries.

Art theft may well be the world's most profitable criminal trade after illegal narcotics. The worldwide market for stolen art is estimated to run as high as $1 to $2 billion annually, about the size of the legitimate art business in 1989. Indeed, a number of drug traffickers use art works to launder money. Only recently have there been any efforts to develop an international computerized register of stolen artwork.

This amendment will facilitate law enforcement efforts by increasing the statute of limitations for art thefts. Investigators, prosecutors, museums, and galleries will have more time to assess their losses and bring charges against art criminals, particularly in cases where art thieves hide stolen art for long periods of time.

The amendment also makes art thefts an explicit Federal offense, and authorizes the Federal Bureau of Investigation to commence investigations of such thefts immediately. In addition, the amendment will punish museums and galleries that knowingly exhibit or store stolen art. Finally, the amendment subjects art thieves to criminal forfeiture sanctions and adjusts the penalties for thefts.

Commensurate with its statutory duty to promulgate guidelines and policy statements that structure sentencing authority, the U.S. Sentencing Commission will undoubtedly consider the need for any change in the guidelines to reflect the increased penalties that this amendment would make applicable to thefts of major art works.

One approach the Commission may wish to consider would be promulgating a policy statement directing generally that when priceless objects are stolen, an upward departure from the otherwise applicable guideline range may be appropriate. In any case, it will be up to the Commission to determine the best course of action giving effect to the intent of this amendment. The amendment is an important step toward addressing the serious problem of art thefts and punishing those who assault our cultural heritage by depriving us of these great works.

Mr. President, I ask unanimous consent that these articles concerning the March 1990 theft at the Isabella Stewart Gardner Museum, be printed in the RECORD at this point.

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

[From the Christian Science Monitor, Mar. 22, 1991]

BOSTON ART THEFT: MUSEUMS REVIEW SECURITY SYSTEMS

(By Laura Van Tuyl)

BOSTON.—As average citizens and aficionados alike become fascinated over the heady prices that fine art is commanding today—so does the cunning thief.

Rising market values for paintings and other objects have prompted an increase in the number of art thefts around the world, industry officials say.

The lastest casualty is the Isabella Stewart Gardner Museum here, where an estimated $200 million worth of art was stolen March 18. The heist was a severe jolt to the staff of this small, but world-class, institution. Thieves made off with 13 items including a rare Vermeer painting, three Rembrandts, and five Degas works in the largest art theft ever in the United States. The works stolen were not insured for theft.

As a result of this and thefts elsewhere, museums are reviewing security measures in a world where not even the most sophisticated surveillance equipment can be 100 percent effective.

At the Gardner, security guards allowed two men posing as police officers to enter the museum during the night. The men disconnected the state-of-the-art alarm system and spent two hours removing selected works.

Anne Hawley, the Gardner's director, called the crime "a barbaric act," but expressed confidence the objects would be returned. "The public's access to art is continuing to be eroded by these kinds of activities," she said during a press conference.

While precise figures for the number of stolen art and antique objects are unavailable, theft "certainly seems to be on the rise," says Margaret O'Brien of the *International Foundation for Art Research (IFAR)*, a clearinghouse for art-theft information. In 1988, the foundation had 24,000 files on stolen art, compared with 32,000 files today. Thefts reported to IFAR occur mostly in Italy, says Ms. O'Brien, with the Netherlands in second place. Many pieces go underground for years.

Soaring prices and "the corresponding publicity the prices get seem to encourage more theft," says William Martin, a detective with the Los Angeles Police Department, who traces stolen art. "We have a big problem in this city," mostly affecting private collections and galleries, Mr. Martin says.

Recent major thefts include the taking of three van Gogh paintings, worth $72 million, from the Kroeller-Mueller Museum in in the Netherlands in 1988. They have since been recovered. Last year, a Gauguin watercolor

disappeared from a customs warehouse at London's Heathrow Airport, and liturgical silver relics were taken from a seminary in Monteriggioni, Italy.

In some cases, ransom is demanded from the art's owner or the owner's insurer. Stolen paintings have been discovered during drug raids, too. Drug cartels trade paintings back and forth to circumvent money-laundering problems, or as a commodity, instead of trading money," says Charles Moore, a private investigator in Brockton, Mass.

Since the art taken from the Gardner Museum is so widely known, criminals will have a hard time unloading it. "There can't be many people in the world that in a few weeks won't become familiar with that list of pictures," say Jay Cantor, director of museum services for Christie's in New York. Both Christie's and Sotheby's auction houses are underwriting a $1 million reward for information leading to the return of the works.

Art industry experts agree boosting security is the key to reducing art thefts. Fortunately, "over the last four years there have been vast improvements in alarm systems for galleries and museums," says Gregory Smith, vice president of Smith International Adjustors, which handles art-theft claims.

"The problem is," says detective Moore, "you can have the most sophisticated system installed, but it's only as good as the human element involved." He advises museums to have several different alarm systems.

Around the world, police agencies tend to cooperate well in searching for stolen artwork, says detective Martin, who recently attended a world art conference in Lyon, France, hosted by Interpol, the international police agency. But art-theft laws in various countries need to be coordinated, he says. According to some laws, a person who buys a work of art in good faith gets full title to it, "even if it's stolen," Martin says.

"In the museum community, there is a high degree of sharing of ideas" concerning security, says Anne Evans, administrator of the National Gallery in Washington, D.C. A rising number of thefts cause "people in the museum business to be extremely careful. . . . We're apalled by the kind of loss the Gardner has suffered. . . . For us, it's a good reminder that all the effort we put into security is worth it."

[From the Journal of Commerce, May 25, 1990]

BOSTON CASE FOCUSES ATTENTION ON ART BURGLARY EPIDEMIC

NEW YORK.—Two million dollars worth of stolen art treasures could surface any day if police get a break in what has evolved into the most extensive dragnet ever for stolen U.S. Art. But history suggests the paintings could remain out of sight for years, while the thieves peddle them to a wealthy art collector or drug baron, use them to publicize a political cause or wait for burning interest in the art works to cool down.

Rembrandt's "The Storm on the Sea of Galilee" and other masterpieces stolen from Boston's Gardner Museum in March are probably lying covered in canvas in the corner of a cool, dark basement here or one of several other art capitals, part of a scheme authorities believe was painstakingly plotted months before the record-breaking Boston heist.

Whatever its outcome, the Gardner case already has focused attention on an epidemic of art burglaries here and abroad—a crime spree that has built stolen art into a billion dollar business, second only to narcotics, threatens to transform galleries into armed garrisons and has gone largely ignored by police, prosecutors and the public.

Art thieves inhabit a steamy, seamy world, law enforcement officials say: Wealthy drug lords commission thefts to adorn their walls or buy pilfered paintings because they are easier to smuggle out than cash. Organized crime has added art theft to gambling, drugs and other vices. Thieves sell art through an international network of dealers, who market it to respectable collectors. And political extremists, dictators such as the deposed Idi Amin of Uganda, unethical international bankers and other shady characters buy and sell stolen works.

The authorities are better at describing the thieves than catching them, however: 90% of stolen paintings, sculptures and other art works are never recovered.

"Law enforcement's priorities reflect the view of society that art is something for rich people. Even though museum attendance far outnumbers that at all national sports events combined, it doesn't seem to affect people in the same way; it isn't a bread and butter issue," said Charles Koczka, who spent 14 years tracking art thieves for the U.S. Customs Service.

"I often thought that to wake up America, it would take something like Philadelphia learning that the Liberty Bell was gone and finding it in another country. We're a rather young country and haven't had a serious loss," Mr. Koczka added.

America's losses are mounting fast, though. New York City police say the number of art thefts here has doubled in the past year, with comparable increases reported across the country.

Soaring art prices are partly to blame: The cost of Impressionist paintings, a good barometer of the market, has risen 25% each of the last two years. "Thieves have discovered they can make a big profit even though they earn just 1% of the painting's value. It's better than stealing televisions, Walkmen or gold chains," said Constance Lowenthal, head of the International Foundation for Art Research, a New York group that tracks stolen paintings.

Art theft also is front-page news. That publicity, along with the ease of pulling the heists and the likelihood of getting away clean, encourages copy-cat crimes, police say. "If you walked into the Bank of Boston you wouldn't see $300,000 lying on a table unattended, but that's exactly what is happening in galleries and museums," said Detective Joseph Keenan, New York City's senior art investigator.

The Gardner heist, the biggest ever, is sure to fuel the stealing frenzy. "If thieves show up as cops or firemen how, under pressure and fear, can we check who they really are?" asked John Walsh, director of the nation's wealthiest museum, the J. Paul Getty in California.

Law enforcement officials, meanwhile, are severely constrained in their ability to fight back. New York and Los Angeles are the only police departments with art theft specialists; Los Angeles has two who work full-time out of a department of 8,257, while New York has several part-timers out of a force of 26,199. The FBI and Customs Service are equally strapped, with a dozen or so agents who spend a large part of their time investigating stolen art.

By comparison, France has 30 full-time art investigators and Italy has 80.

In the Gardner case, however, no resources are being spared to nab the thieves and retrieve their loot: The FBI's Boston office initially assigned 20 agents to the case, 12 of whom are still working on it. Agents in several other cities where there are strong leads also are working full time, with help from officials in the 54 remaining field offices and legal attaches in embassies from Hong Kong to London to South America.

Boston police are helping out, too, and interpol has alerted law enforcement officials in its 153 bureaus worldwide. Authorities reached out to the public on May 13 through the television show "America's Most Wanted."

"It's probably the most extensive investigation we've ever done," said Tron Brekke, assistant agent in charge of the Boston FBI office. Unlike other art thefts, he explained, at the Gardner "They tied up the guards, it was a violent crime. Then there is the notoriety and value of the paintings."

Who has the Gardner works, and why did they take them?

The assumption with most stolen paintings would be that they had entered the art underworld, a clandestine network of professional thieves, fences and shady dealers who channel works from their rightful owners to collectors, museums and others who assume they are making legal purchases and often do not ask too many questions. But the Gardner paintings by Vermeer, Rembrandt and other masters are too well known to pass off as legitimate and too hot for savvy crooks to handle, experts agree.

That leaves several intriguing possibilities, according to interviews with past and present FBI and Customs agents. New York City police, Scotland Yard officials, gallery owners, auction house executives, insurance adjusters and appraisers, museum curators and other specialists. Based on cases of art theft that have been cracked, here are what they say are the most likely scenarios:

Drugs. To wealthy drug kingpins "Art is just like gold and diamonds. They put their money into art to make it easier to take in and out of the country," said Victoria Ovis of the Customs Service's New York office. Sometimes that art is bought legally, police say, and sometimes it is stolen.

Drug barons also appear to be commissioning art thefts. Stolen paintings were captured during drug raids last year in Amsterdam and this year in Scotland, and investigators suspect the same thing is happening in the United States.

Organized crime. "They're definitely involved with stolen art * * * But they're not the majority," said Thomas Moscardini, a 21-year veteran of the New York City Police Department who specialized in art investigations. The Mafia's motivation is simple, he added. Easy money, the same as they get from narcotics, gambling and prostitution.

Political activists. In 1911, Vincenzo Perugia spirited the Mona Lisa out of the Louvre to return it to Italy, which he said was its rightful owner. Decades later, IRA terrorists stole paintings from British collectors to collect a ransom and attention. Eight weeks ago, some investigators speculate, activists may have raided the Gardner to bring money or publicity to a yet-to-be disclosed cause.

Japan. The place to sell stolen art, many investigators say, is Japan, a country wealthy enough to buy more and more treasures and with art-theft laws weak enough to entice crooks.

The European connection. In Switzerland, investors can store works of art or anything else in "Free ports" without worrying about thieves breaking in, governments extracting taxes or investigators finding out what they have. Warehouses there are as secure—and

discrete—as Swiss banks and would be a logical place to stash stolen paintings, said Paul Tucker, who organized the Museum of Fine Art's recent Monet exhibit.

[From the Christian Science Monitor, Nov. 6, 1990]

ART THEFT UPDATE: HEIST UNSOLVED, GARDNER MOVES ON

(By Laura Van Tuyl)

BOSTON.—The largest art theft in the United States has dropped out of the media spotlight, but every day at the Isabella Stewart Gardner Museum here staff members have to face the blank spots on the walls where the treasured works once hung.

Over six months after the $200 million heist, which rocked this city and reverberated around the world, the atmosphere at the Gardner Museum is a mixture of hope and nagging worry, fortitude and uncertainty. Despite the museum's offering of a $1 million reward for information leading to the safe recovery of the works, the case remains unsolved.

"It's a very active case," asserts director Anne Hawley, interviewed in her office. The FBI "has told us they still have the same amount of manpower they did at the beginning. They want very much to crack it."

"We're still evaluating information and still trying to pursue leads," says William McMullin, special agent for the FBI in Boston, who declined to comment further.

The sense of loss at the Gardner has been relieved somewhat by the generous outpouring of community support since the theft, says Ms. Hawley.

"The theft just shattered the community's complacency about this institution," she says. An ad agency, a research firm, a hotel, and a local carpenter are among the many sources now donating services. "People woke up to realize that this is a vulnerable institution, that it's not wealthy, that it needs help from the community if it's to be preserved for future generations."

Attendance at the Gardner increased 35 percent after the theft last March, though Hawley attributes the rise, in part, to the blockbuster Monet show going on concurrently at the nearby Museum of Fine Arts, which drew 537,000 people. Visitor levels at the Gardner have now dropped significantly from that previous high, however, and Hawley is forging ahead with ambitious plans to increase membership from 1,800 to 5,000.

During the interview, Hawley refused to talk about changes in security procedures since the theft, though the museum, in contrast to a year ago, was literally crawling with blue-uniformed guards. It was later confirmed by a museum spokeswoman that the Gardner has hired a museum security consultant and is considering plans to build a bulletproof "secure vault" for use by the guards.

Though Hawley could not emphasize enough the sense of grief the staff was still feeling, "my mood is certainly back on track," she says. Her spirits have been lifted by a new fall lecture series and by several staff members she has brought on board who are eager and upbeat, including music director Scott Nickrenz, who will guide the Gardner's much-heralded tradition of chamber music concerts. Mr. Nickrenz is a cellist and the director of chamber music at the Spoleto Festivals in South Carolina, Italy, and Australia.

Conservation of the 2,000-piece collection, however, is the museum's chief concern, says Hawley, since the collection is permanent and cannot be altered nor added to. Both Hawley and the conservation staff are constantly worrying about the unknown condition the 13 stolen items, which include a rare Vermeer painting, three works by Rembrandt, and three by Degas.

"If they're being left in a damp basement somewhere, they're not going to be in too good of a shape," said Barbara Mangum, conservator of objects. Mold growth or warping could occur, as well as damage from direct sunlight or ultraviolet light.

The two Rembrandt oil paintings, "The Storm on the Sea of Galilee" and "The Lady and Gentleman in Black," were violently cut out of their frames. The pictures might have been folded or rolled, which could be disastrous if they remain that way for long.

While the creasing or warping of a masterpiece is awful to contemplate, the loss of paint is a conservation's "worst fear," says Mrs Mangum. After the thieves had sliced through the Rembrandts, minute chips of paint were found on the floor and retrieved with tweezers. If the paintings are returned, the chips can be reapplied. Interestingly, analysis of the chips, conservators say, can yield valuable information about the master's painting techniques—insights not attainable through infrared and X-ray analysis.

The Boston-based Polaroid Corporation, using large-format photography and digital image processing, is making photographic reproductions of the stolen works from the museum's supply of transparencies. Hawley is planning to exhibit the images, which she says are "amazing" fool-proof likenesses of the originals. "We find there is a tremendous amount of vision interest in looking at these works," she says.

The more familiar the public is with the artworks, the greater the chances are of finding them. Hawley says she is encouraged by some recent major recoveries of stolen art. This summer, 25 Old Master drawings and paintings, among other items, were returned in mint condition to New York's Colnaghi Art Gallery robbed in February 1988. That was the largest art theft in the US before the Gardner incident. And in April, the FBI announced it had recovered four 17th-century Dutch paintings stolen eight years ago from the Detroit Institute of Art.

These events are part of "a regular ebb and flow" of thefts and recoveries, says Constance Lowenthal, director of the International Foundation for Art Research, an organization that tracks stolen art. she is not suprised, despite the well-known nature of the Gardner works and the $1 million reward, that nothing has turned up.

"There are some thefts of masterpieces where the works are recovered very quickly," she says, "but often we wait many years. There's no predictable timetable for expecting a recovery. It requires a tremendous amount of patience."

AMENDMENT NO. 508

In the appropriate place insert the following:

The Congress finds that:

An adequately supported Federal judiciary is essential to the enforcement of law and order in the United States, and

Section 331 of Title 28 provides in pertinent part that the Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation, and

In 1990, in response to the recommendations of the Judicial Conference for additional judgeships, Congress enacted legislation creating 85 additional judgeships with an effective date of December 1, 1990, and

Only one of these vacancies has been filled, and

During the current administration, it has taken an average of 502 days from the time a judgeship becomes vacant until such vacancy is filled, and

The enactment of legislation providing additional funding for the investigation and prosecution facets of the criminal justice system has a direct and positive impact on the needs and workload of the Judiciary, which is already severely overloaded with criminal cases, and

Recommendations by the Judicial Conference for the filling of judicial vacancies are currently made on the basis of historical data alone, and

The General Accounting Office, pursuant to the 1988 Anti-Drug Abuse Act, has developed a computer model that measures the potential effect of fiscal increases on one or more parts of the criminal justice system on the Judiciary, and

The General Accounting Office has established that an increase in the resources allocated to the investigative and prosecutorial parts of the criminal justice system, brings about an increase in the number of criminal cases filed, which in turn adds to the need for additional judgeships, and

The allocation of resources to portions of the federal criminal justice system other than the Judiciary contributes to the need for additional judgeships that cannot be anticipated by the use of historical data alone, and

The use of historical data alone, because of its inability to project the need for additional judgeships attributable to the increase in criminal caseload adds to the delay in meeting the needs of the Judiciary.

Therefore, it is the Sense of the Senate:

It is the sense of the Senate that the Judicial Conference should be encouraged to make its recommendations to Congress for additional judgeships utilizing historical data and a workload estimate model designed to anticipate an increase in criminal filings resulting from increased funding in one or more components of the federal criminal justice system, and to take into account the time expended in the appointive and confirmation process.

AMENDMENT NO. 509

On page 100, line 16, please insert the following language as new subsection (2):

"Such training programs shall include a drug education program which:

(a) trains Police Corps participants concerning drug and alcohol abuse education and prevention;

(b) develops a framework for their collaboration with the local school systems and community resources to reduce the availability and demand for drugs by teaching students to recognize and resist pressures to experiment with drugs and alcohol. This may specifically include instruction about:

(i) understanding the consequences of drug abuse;

(ii) resistance techniques;

(iii) managing stress without taking drugs;

(iv) positive alternatives to drug abuse behavior;

(v) self-esteem building activities;

(vi) resistance to peer pressure and gang pressure;

(vii) decision-making and risk taking;

(viii) interpersonal and communications skills."

On page 106, line 9, after the period insert the following: "This section authorizes sums as may be necessary to implement this program."

AMENDMENT NO. 509

Mr. FOWLER. Mr. President, I rise today to propose an amendment to the Police Corps provisions of the crime bill.

I think the Police Corps proposal is on the right track. It extends the ROTC concept to law enforcement by offering full scholarships to students willing to commit to 4 years of service as a law enforcement officer after graduation. Police Corps students will receive training during the summer to qualify them to make the maximum contribution to our law enforcement efforts.

The amendment I propose is designed to incorporate intensive drug education programs into that training. It calls on the Director of the Police Corps to develop a framework for participants to collaborate with local school systems and community resources to reduce the availability and demand for drugs by teaching students to recognize and resist pressures to experiment with drugs and alcohol.

This may be accomplished by teaching our school children such important skills as: understanding the consequences of drug abuse, resistance techniques, managing stress without taking drugs, positive alternatives to drug-abuse behavior, self-esteem building activities, resistance to peer pressure and gang pressure, decisionmaking and risk taking, and interpersonal and communications skills.

The idea is to get these young police officers involved in schools and communities teaching other young people about drug abuse—much the same way we do in the very impressive DARE Program. In addition to giving youngsters police role models, we would be giving them peer role models as well. We would have trained young people teaching the young people coming up right behind them.

There is a general consensus that our national drug control policy must focus on reducing the demand for drugs, not simply the supply. If demand can be eliminated, then the supply side of the equation is irrelevant. This is where drug education plays a role.

However, the fact remains that our struggle has just begun. For example, only one State, Connecticut, can provide comprehensive drug education programs for students in every grade. In only eight States do the resources exist to provide comprehensive drug education programs to 50 percent of its students. Even more disturbing is knowing that 29 States are only able to reach one-third of its students with this important message. The facts do not lie; many kids are left out in the cold.

We are spending a lot of time, during this crime bill debate, talking about enforcement, about training to fight the dangerous war against drugs, about buying equipment to match the ordinance of the drug dealers. We are calling for tougher laws—and the jails, prosecutors, police officers, and judges to implement them.

It is time to build an infrastructure of drug education into our law enforcement operations. The more we can inculcate that antidrug awareness into our schools and communities, the more we can build a bond of trust between law enforcement and American youth, the better off we will be.

I believe we can use the Police Corps to help build drug-free communities, and I ask my colleagues to commit the U.S. Senate to that purpose.

AMENDMENT NO. 510

Mr. STEVENS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 510.

On page 150, on line 21, immediately before the period insert the following: "unless such receipt is for lawful sporting purposes.".

Mr. STEVENS. Mr. President, this is the language that was sent to me by the Department of Justice to clear up the problem that I have mentioned about the receipt-of-firearms-by-nonresidents provision, which appears on page 150 of the bill. It has been cleared by both sides. I am hopeful it will be agreed to now so that we can be sure that we do not inadvertently have just a disastrous effect upon the international tourism that is associated with legitimate hunting by licensed persons for sporting purposes, in our Western States in particular.

Mr. FOWLER. Mr. President, we agree with the amendment.

The PRESIDING OFFICER. The question is an agreeing to the amendment.

The amendment (No. 510) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FOWLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I thank the distinguished managers of the bill and staff for working with us, and I appreciate the courtesy of the Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GRAHAM). Without objection, it is so ordered.

The Senator from Delaware is recognized.

AMENDMENT NO. 503, AS MODIFIED

Mr. BIDEN. Mr. President, I ask unanimous consent that the Dole-Metzenbaum amendment No. 503 be modified to have stricken only through page 245, line 15 of the bill.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

AMENDMENT NO. 511

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN], for Mr. ROTH, proposes an amendment numbered 511.

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

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

The amendment is as follows:

On page 114, strike all on lines 22 through 26.

Mr. ROTH. Mr. President, this amendment strikes language in the legislation which would make it Federal law that law enforcement officers could actively participate in political activity. I am concerned with this language because it runs counter to the premise of the Federal Hatch Act, which governs the political activity of Federal employees and certain State and local employees whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency.

I am also concerned with this language to the extent that this Federal law will preempt State Hatch Act laws governing the political activity of State employees.

The legislation we are considering does not appear to make a distinction between State and Federal law enforcement officers. Under current law, Federal law enforcement officers are covered under the Hatch Act. This section would repeal that coverage.

Mr. President, as the ranking member of the Senate Governmental Affairs Committee, I spent 2 weeks on the Senate floor last session arguing against legislation from the committee which would have repealed the Hatch Act for Federal employees. The language in this bill goes farther with regard to law enforcement officers than that bill, which I might add the President vetoed, and the Senate sustained that veto.

This legislation allows law enforcement officers to participate in political activity, but does not define the term political activity. Law enforcement officers could run for office, or solicit contributions from the public at large.

The legislation offered by the Governmental Affairs Committee last year did not allow for such activity.

In addition, the legislation last year attempted to provide some additional protections to offset the changes that were made, such as preventing solicitation of political activity of any person who is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employing office of such employee. The provision before us provides no such attempt to offset the changes being made.

Mr. President, the foregoing discussion illustrates the complexity and importance of this issue. The Committee on Governmental Affairs has debated the issue of the Hatch Act over many years. The language in the bill joins in that debate.

No hearings have been held with regard to this provision during this session. Clearly this provision needs greater examination before being considered by the Senate. I urge the adoption of my amendment and appreciate the cooperation of the chairman of the Judiciary Committee.

Mr. BIDEN. This amendment of Senator ROTH relates to the policeman bill of rights, which is in the Biden bill. It strikes one portion of the language in that bill. The managers on the Republican side are prepared to accept the Roth amendment, and I am prepared to accept the Roth amendment. I urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 511) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

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

AMENDMENT NO. 513

(Purpose: To establish a U.S. Marshals Association)

Mr. THURMOND. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. THURMOND] proposes an amendment numbered 513.

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

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

The amendment is as follows:

At the appropriate place in the bill, add the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Marshals Association Establishment Act".

SEC. 2. ESTABLISHMENT AND PURPOSES OF ASSOCIATION.

(a) ESTABLISHMENT.—There is established the United States Marshals Association (hereinafter in this Act referred to as the "Association"). The Association is a charitable and nonprofit corporation and is not an agency or establishment of the United States.

(b) PURPOSES.—The purposes of the Association are—

(1) to elevate and strengthen public knowledge of law enforcement in general, and the United States Marshals Service in particular;

(2) to promote the exchange of information among private and public institutions and individuals about law enforcement and justice systems issues;

(3) to organize symposia, studies, and research in carrying out paragraphs (1) and (2);

(4) to study the history of law enforcement;

(5) to produce, sell, and distribute educational materials on law enforcement and justice systems issues;

(6) to accept and administer private gifts or property for the benefit of, or in connection with, the activities and services of the United States Marshals Service; and

(7) to promote law enforcement.

SEC. 3. BOARD OF DIRECTORS OF THE ASSOCIATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—The Association shall have a governing Board of Directors (hereinafter referred to in this Act as the "Board"), which shall consist of not less than 3 nor more than 20 Directors, each of whom shall be a United States citizen and be knowledgeable or experienced in law enforcement matters. The Director of the United States Marshals Service shall be a nonvoting member of the Board, ex officio. Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(b) APPOINTMENT AND TERMS.—

(1) INITIAL APPOINTMENT.—The Directors of the Board first appointed shall be appointed by the United States Marshals Association, a non-profit corporation in existence before the enactment of this Act, which is organized under the laws of the State of Virginia.

(2) SUBSEQUENT APPOINTMENT.—The Directors of the Board appointed after the appointment of Directors under paragraph (1) shall be appointed in the manner provided in the bylaws of the Association.

(3) ADVICE OF DIRECTOR.—Any Director of the Board may be appointed with the advice of the Director of the United States Marshals Service (hereinafter referred to in this Act as the "Director").

(4) TERMS.—The Directors of the Board shall be appointed for terms of 4 years. A vacancy on the Board shall be filled in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a Director of the Board.

(c) CHAIR.—The chair of the Board shall be elected by the Board from its members to a 2-year term.

(d) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the chair at least twice each year. If a Director of the Board misses 3 consecutive regularly scheduled meetings, that individual may be removed from the Board as provided in the bylaws of the Association, and that vacancy may be filled in accordance with subsection (b).

(f) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary travel and subsistence expenses incurred by them in the performance of the duties of the Association.

(g) GENERAL POWERS.—(1) The Board may complete the organization of the Association by—

(A) appointment officers and employees;

(B) adopting a constitution and bylaws consistent with the purposes of the Association and the provisions of this Act, and

(C) carrying out such other actions as may be necessary to carry out this Act.

(2) The following limitations apply with respect to the appointment of officers and employees of the Association:

(A) Officers and employees may not be appointed until the Association has sufficient funds to pay them for their services. Officers and employees of the Association shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the maximum rate of pay payable under section 5376 of title 5, United States Code, for a position classified above grade GS–15 of the General Schedule.

(B) The first officer or employee appointed by the Board shall be the Secretary of the Board who—

(i) shall serve, at the direction of the Board, as its chief operating officer, and

(ii) shall be knowledgeable and experienced in matters relating to law enforcement.

(h) ADVISORY COUNCIL.—The chair of Board may appoint an Advisory Council of up to 15 members to advise the Association on its activities under this Act. Members of the Advisory Council have no vote in matters before the Association.

SEC. 4. MEMBERSHIP.

(a) ELIGIBILITY.—Eligibility for membership in the Association shall be limited to persons and organizations demonstrating support of the stated purpose, goals, and functions of the Association. Categories of membership shall be as follows:

(1) Regular member, which shall be limited to individuals actively or formerly employed in the United States Marshals Service.

(2) Associate member, which shall be limited to individuals who are qualified by training or experience in Federal, State, local, or foreign law enforcement.

(3) Honorary member, which shall be limited to individuals who have an outstanding record of service in the public or private sector.

(4) Corporate member, which shall be limited to nongovernmental public, private, or nonprofit organizations which support the purposes of the United States Marshals Association.

(5) Sponsoring member, which shall be limited to Federal or State government entities.

(b) APPLICATION.—Persons may apply or be nominated for membership in the Associa-

tion. Any such application shall be made in writing on the form provided by the Association.

(c) SPONSORSHIP.—Applicants or nominees for membership in any category except that of sponsoring member must be proposed by a regular member. Acceptance of applicants or nominees for membership shall be determined by a majority vote of the Board.

(d) DUES FOR MEMBERS.—Membership dues shall be established by the Board. Dues must accompany a prospective member's application. No dues shall be required in the case of honorary members or sponsoring members.

(e) VOTING.—A member may vote in matters for which the vote of the Association is required, and may serve on the Board.

(f) SUSPENSION OR EXPULSION OF MEMBERS.—A member may be suspended or expelled for nonpayment of dues in arrears for at least 60 days, for good cause, or for other reasons by a vote of two-thirds of the Board in accordance with procedures prescribed in Robert's Rules of Order. No member who has been suspended or expelled from the Association may be readmitted to membership for a period of 1 year, and readmission thereafter shall require the consent of two-thirds of the Board.

SEC. 5. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.

(A) IN GENERAL.—The Association—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States.

(3) shall have its principal offices in the State of Virginia or such other place as may be determined by the Board; and

(4) shall at all times maintain a designated agent authorized to accept service of process for the Association.

The service of process upon the agent required under paragraph (4), or the mailing of such process to the business address of such agent, shall be deemed to be service upon the Association.

(b) SEAL.—The Association may use the seal, insignia, or badge of the United States Marshals Service, and other materials unique to the United States Marshals Service, only with the express written permission of the Director.

(c) POWERS.—To carry out its purposes under section 2, the Association shall have, in addition to the powers otherwise given it under this Act, the usual powers of a corporation acting as a trustee in the State of Virginia or wherever else the Association is incorporated. The Association shall have the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, or real or personal property or any income therefrom or other interest therein:

(2) to acquire by purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom;

(4) to borrow money and issue bonds, debentures, or other debt instruments:

(5) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the Directors of the Board shall not be personally liable, except for gross negligence;

(6) to carry into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(7) to do any and all acts necessary and proper to carry out the purposes of the Association.

A gift, devise, or bequest may be accepted by the Association even though it is encumbered, restricted, or subject to the beneficial interests of private persons if any current or future interest therein is for the benefit of the Association.

SEC. 6. ADMINISTRATIVE SERVICES AND SUPPORT.

The Director may provide personnel, facilities, and other administrative services to the Association, including reimbursement of expenses under section 3, not to exceed the then current Federal Government per diem rates, for a period of up to 5 years from the date of the enactment of this Act, and may accept reimbursement therefore, to be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services.

SEC. 7. VOLUNTEER STATUS.

The Director may, notwithstanding section 1342 of title 31, United States Code, accept voluntary services of the Association in the performance of the functions of the Association under this act.

SEC. 8. RESTRICTIONS.

(A) FINANCIAL INTERESTS.—No part of the income or assets of the Association shall inure to any member or officer of the Association or Director of the Board or be distributed to any such person. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers or the Association or reimbursement for actual necessary expenses in amounts approved by the Board.

(b) PROHIBITION ON LOANS.—The Association shall not make any loan to any Director of the Board or to any officer or employee of the Association.

(c) PROHIBITION ON STOCK.—The Association shall have no power to issue any shares of stock or to declare or pay any dividends.

SEC. 9. AUDITS, REPORT REQUIREMENTS, AND PETITION OR ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) AUDITS.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law," approved August 30, 1964 (Public Law 88-504, 36 U.S.C. 1101 through 1103), the Association shall be treated as a private corporation established under Federal law.

(b) REPORT.—The Association shall, as soon as practicable after the end of each fiscal year, transmit to the Congress a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments.

(c) RELIEF WITH RESPECT TO CERTAIN ASSOCIATION ACTS OR FAILURE TO ACT.—If the Association—

(1) engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with its pruposes set forth in section 2(b); or

(2) refuses, fails, or neglects to discharge its obligations under this Act, or threatens to do so,

the Attorney General of the United States may petition the appropriate court for such equitable relief as may be necessary or appropriate.

SEC. 10. UNITED STATES RELEASE FROM LIABILIITY.

The United States shall not be liable for any debts, defaults, acts, or omissions of the Association, nor shall the full faith and credit of the United States extend to any obligation of the Association.

SEC. 11. NONDISCRIMINATION.

(a) EMPLOYMENT PRACTICES.—Notwithstanding section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b)) or section 101(5)(B) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(5)(B)), the Association and any agent of the Association shall be considered an employer for purposes of title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990 if the Association is engaged in an industry affecting commerce and meets the minimum employee requirements set forth in those Acts.

(b) MEMBERSHIP PRACTICES.—

(1) PROHIBITED PRACTICES.—It shall be unlawful for the Association, on the basis of the race, color, religion, sex, national origin, age, or disability, of an individual, to—

(A) fail or refuse to accept the individual into membership;

(B) expel the individual from membership;

(C) suspend the membership of the individual; or

(D) discriminate against the individual with respect to any of the benefits or obligations of membership.

(2) ENFORCEMENT.—

(A) RIGHT OF ACTION.—Any person may bring a civil action to enforce paragraph (1) in any appropriate United States district court. Any such action may be dismissed for just cause.

(B) INJUNCTIVE RELIEF.—In any civil action brought under this paragraph, the court may grant as relief any permanent or temporary injuction, temporary restraining order, or other equitable relief as the court determines appropriate.

SEC. 12. ACQUISITION OF ASSETS AND LIABILITIES OF EXISTING ASSOCIATION.

The Association may acquire the assets of the United States Marshals Association, a nonprofit organization organized under the laws of the State of Virginia before the enactment of this Act.

SEC. 13. AMENDMENT AND REPEAL.

The Congress expressly reserves the right to repeal or amend this Act at any time.

Mr. THURMOND. Mr. President, I am pleased to offer this amendment to the crime bill which establishes a U.S. Marshals Association. This amendment is nearly identical to S. 134, which Senator BIDEN and I introduced earlier this year. S. 134 unanimously passed both the Senate Judiciary Committee and the full Senate and is currently in the House Judiciary Committee. The companion legislation, H.R. 2665, was introduced in the House by Congressmen GEKAS and HUGHES.

I feel it is only appropriate to elevate and strengthen public knowledge of law enforcement in general and the U.S. Marshals Service in particular by offering this amendment to establish a U.S. Marshals Association. This amendment is modeled after similar legislation which established the National Fish and Wildlife Foundation and the National Park Foundation.

I urge my colleagues to support this worthwhile amendment.

The PRESIDING OFFICER. Is there further debate? Is there objection to the amendment?

Mr. THURMOND. Both sides have agreed to it, Mr. President.

The PRESIDING OFFICER. There being no further debate, the question is on agreeing to the amendment.

The amendment (No. 513) was agreed to.

Mr. THURMOND. Mr. 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.

AMENDMENT NO. 514

(Purpose: To study racial and ethnic bias in the criminal justice system)

Mr. GRAHAM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 514.

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

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

The amendment is as follows:

On page 35, beginning with line 12, strike through line 18 on page 44 and insert the following:

SEC. 207. RACIAL AND ETHNIC BIAS STUDY GRANTS.

(a) FINDINGS.—The Congress finds that—

(1) equality under law is tested most profoundly by whether a legal system tolerates race playing a role in the criminal justice system; and

(2) States should examine their criminal justice systems in order to ensure that racial and ethnic bias has no part in such criminal justice systems.

(b) AUTHORIZATION OF GRANT PROGRAM.—

(1) IN GENERAL.—The Attorney General, through the Bureau of Justice Assistance, is authorized to make grants to States that have established by State law or by the court of last resort a plan for analyzing the role of race in that State's criminal justice system. Such plan shall include recommendations designed to correct any findings that racial and ethnic bias plays such a role.

(2) CRITERIA FOR GRANTS.—Grants under this subsection shall be awarded based upon criteria established by the Attorney General. In establishing the criteria, the Attorney General shall take into consideration the population of the respective States, the racial and ethnic composition of the population of the States, and the crime rates of the States.

(3) REPORTS BY STATES.—Recipients of grants under this subsection shall report the findings and recommendations of studies funded by grants under this subsection to the Congress within reasonable time limits established by the Attorney General.

(4) REIMBURSEMENT OF STATES.—Grants may be made to reimburse States for work started prior to the date of enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 to carry out the provisions of this section.

Mr. GRAHAM. Mr. President, the amendment which I have sent to the desk has been cleared on both sides.

This amendment is virtually identical to an amendment I offered and the Senate accepted during debate on last year's crime bill.

This amendment authorizes a small grant program for States to conduct studies on racial and ethnic bias in their criminal justice systems.

I believe, Mr. President, that this is a proper response to the concerns raised earlier in this debate about racial and ethnic discrimination in our judical system.

An assessment of what can be done to rid the system of bias is best conducted by individual States.

The State of Florida recently concluded such a study, which received tremendous support from judges, attorneys, and citizens throughout the State.

The general objective of the Florida study was to assess whether minority offenders are being treated fairly and equally at each stage of criminal justice proceedings.

The study found that:

First, racial and ethnic minorities are severly underrepresented as judges in Florida.

Second, relationships between law enforcement and minorities are adversely affected by cultural differences and misunderstandings.

Third, minority juveniles are being treated more harshly than nonminiority juveniles at all stages of the juvenile justice system.

Fourth, differential treatment of minority juveniles results, in part, from racial bias by police officers, prosecutors, and judges.

I am pleased to report that the recent session of the Florida Legislature accepted and passed into law every recommendation for legislative action contained in the initial report by the study commission.

Recommendations adopted include:

Mandate minority attorney and citizen membership on each judicial nominating commission in Florida;

Seek racial and ethnic diversity in judicial nominations;

Instruct the Florida Department of Law Enforcement to recruit, hire, retain, and promote minorities;

Create a civil rights division within the attorney general's office;

Require training of law enforcement officials in race relations.

Mr. President, similar studies have been or are being conducted in 10 other States: Arizona, California, Hawaii, Iowa, Massachusetts, Michigan, New Jersey, New Mexico, New York, and Washington.

A number of other States have expressed interest to the National Center for State Courts in conducting racial and ethnic bias studies.

In developing this amendment, I had three goals in mind:

First, Congress should do nothing to disrupt the discretionary nature of our criminal justice system;

Second, our States should not be prohibited from applying their laws in a constitutional manner;

Third, we should attempt to analyze the issue of not only potential discrimination in capital litigation, but also potential bias in the entire judicial system—from our law schools to our courtrooms.

This amendment calls for the authorization of $2 million during each of the the next 5 years to make grants to States for racial and ethnic bias studies.

The grants would be administered by the Attorney General through the Bureau of Justice Assistance.

Studies would have to be established by either the highest court of the State, the State legislature, or the chief executive officer of the State.

In establishing criteria for awarding the grants, the Attorney General would take into consideration the population of the respective States, the racial and ethnic composition of the population of the States, and the crime rates of the States.

Mr. President, it is my hope that States will use these funds to look at the entire justice systems and develop innovative methods of not only dealing with discrimination but also of encouraging participation in our justice system by all members of our society.

I hope, as a result of this amendment, other States will be encouraged to do likewise.

Mr. GRAHAM. Mr. President, I urge the adoption of the amendment.

Mr. THURMOND. Mr. President, we do not oppose the amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 514) was agreed to.

Mr. GRAHAM. Mr. President, I move to reconsider the vote.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SYMMS. Mr. President, I ask unanimous consent to proceed for 1 minute as in morning business.

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

A BRIGHT AMERICAN PATRIOT—JOHN TOWER

Mr. SYMMS. Mr. President, this week the O'Leary/Kamber Report, Special Issue, May of 1991 is dedicated to a bright American patriot and to one of the greatest Senators, in my book, that ever served in the U.S. Senate, frankly.

We lost that Senator this year in a tragic airplane crash in Georgia with his daughter.

Thirty years ago this month, a giant named Tower was elected to the United States Senate.

I am quoting Brad O'Leary.

Having served as his chief fundraiser and one of his key consultants for 14 years, I

have dedicated this Special Issue of the O'Leary-Kamber Report to this young professor from Wichita Falls, Texas, who played such a key role in shaping America's future.

Mr. President, I ask unanimous consent that this entire report be printed in the RECORD.

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

JOHN TOWER, PATRIOT

(By Brad O'Leary)

A few weeks ago I lost a friend; Texas lost a hero; America lost a leader; but history claimed a legend.

He died almost 30 years to the day he was elected United States senator. For 24 of those years, my life was enriched by association and friendship with him.

The first time I set eyes on John Tower, he reminded me of the actor Ronald Coleman and especially his famous character, the British schoolteacher Mr. Chips.

The irony is that John Tower really was a schoolteacher. This was a role he never really relinquished when he left his profession to run against a Texas legend—Lyndon B. Johnson.

THE FIRST SOUTHERN GOP SENATOR

Some say John Tower ran against Johnson because no one else in the Texas Republican Party would. But in reality, Tower wanted to take on LBJ because he had a vision for America directly the opposite of Texas' senior senator.

He lost to Johnson in the 1960 general election. But, in 1961, as LBJ moved into the vice president's office, John Tower was off and running in a special election to fill the vacancy. In less than three months, John Tower became the first Republican elected to a statewide office in the old Confederacy since Reconstruction. And, shortly thereafter he began a political battle for the heart and soul of Americans throughout the South.

CREATING THE TWO-PARTY SOUTH

History will say that John Tower was responsible for establishing the two party system—not only in Texas—but in the entire South. His first book, Time for Conservatives, was a mandatory textbook for newly emerging conservative Republican candidates.

From 1961 on John Tower did not just spend time in Washington and Texas. He traveled around Texas and the South recruiting, teaching, and spreading the conservative gospel. Within a decade, he was changing Southern politics forever. There is not a state he didn't travel to and the stories about the lives he touched are part of his legend.

On one of his early trips, Senator Tower traveled to a party barbecue in South Carolina and gave a speech. One man there was so impressed he decided to register as a Republican and, in addition to his duties as a successful dentist, become a part-time politician. That man, Jimmie Edwards, went on to become the first modern-day Republican Governor of South Carolina.

A Tennessee county chairman called John Tower and begged him to come to the "Volunteer State" to help raise money so that a candidate for Congress could be recruited to run against an "unbeatable" Democrat.

The dinner was a success. There was plenty of money raised but no candidate stepped forward. Shortly thereafter, John Tower personally recruited the county chairman to run. County Chairman Bill Brock went on to the House of Representatives, the United States Senate, and then served as chairman of the Republican National Committee before moving to the president's Cabinet.

There are similar stories to be told about other governors, senators and congressmen who ran and won in Louisiana, Georgia, North Carolina, Virginia, Mississippi, Alabama, Arkansas, South Carolina and Tennessee.

When Jeremiah Denton and Mack Mattingly won their Senate seats in 1980 John Tower could take comfort in the fact that he had finally brought the two party system to all of the states in which he had campaigned.

FIRST MILLION-DOLLAR DINNER

Those who John Tower helped never forgot. In 1981, Southern governors, senators and congressmen came to a dinner to honor him. They paid tribute to his twenty years of service and to his role in bringing the two party system to every state in the Old Confederacy.

The dinner became the first million dollar dinner for a federal candidate in U.S. history. No senator or president prior to that time had ever achieved a million dollar single event.

The individuals who gathered in Dallas that evening came to honor Tower just for what he had accomplished, but for the vision he had for a strong, confident, growing America.

They came to pay tribute to a man who fought not only for individual liberty and the free enterprise system, but for a free world as well.

THE ENLISTED MAN WHO NEVER FORGET

John Tower's vision was formed in the crux of battle as an enlisted man in the U.S. Navy during World War II—a vision kept alive by the memory of the blood of fallen comrades.

When he was elected to the U.S. Senate and appointed to the Armed Services Committee, the top Navy brass made a number of attempts to award him a commission. Instead, he spurned all attempts and remained an enlisted man. He did so because he was concerned not just about winning wars, but of having the technology needed to save the lives of the enlisted men who fight America's wars of freedom.

During the tumultuous '60s, '70s and '80s, John Tower became an expert on defense and on NATO. He flew repeatedly to Germany and Great Britain to forge the military and political alliances that he believed would free Eastern Europe and bring down the Berlin Wall. He always reminded his audiences that the Wall had gone up the first year he served in the Senate and he was determined to see it fall!

In 1981, when Ronald Reagan was elected president, John Tower became chairman of the Senate Armed Services Committee. He took President Reagan's dream of an American defense force that is second to none—and made it a reality. Under John Tower's watch, the advanced technological weapons systems which recently proved so pivotal in the Middle East came into being.

That task was not an easy one. Although Reagan had won a resounding mandate in the presidential election, the nation's sluggish economy and memories of the fiascos in Vietnam and Iran had made both the military and defense industry quite unpopular with the American public.

The work John Tower almost singlehandedly did to get Congress to pass the Reagan defense building can be only appreciated by thinking every life saved during Operation Desert Storm.

DEVOTED FATHER

John Tower loved his country, just as much as he loved his family.

His daughters, Penny, Pooh and Jean were at the center of his heart. They were very much a part of his political life and of his campaigning. In 1971 and 1972, one or all three spent weekends traveling throughout Texas with their dad.

The bond John Tower had with his daughters in the early years became even closer as they grew into beautiful young women, Pooh, in particular, put aside the recklessness of teenage years to become his friend, confidant and traveling companion. She was with him when that plane came to rest in the red clay of Georgia. As father and daughter, they had shared with each other a richness of life that can only be envied by fathers everywhere.

Those who didn't really know John Tower thought him cold and aloof. But in reality, his life was rich and full and filled with love and humor.

THE REAL MAN

Those who did think Tower aloof and unresponsive never knew the real man. One weekend in 1972 when we had a series of fundraisers planned, he told me to cancel them. He refused to allow me to give any excuse except to tell people it was due to the press of Senate business. There were a lot of irritated people who thought the Senator just wanted a weekend vacation on the Gulf of Mexico.

Indeed, that weekend he was in Galveston. In fact, he was out on the Gulf. But he was not vacationing, nor was he fishing. He spent the weekend with a man he had never met before—a Texan and a father. This man's son was reported missing in the Gulf a few days earlier and he called Senator Tower in the hopes that his intervention would get the Coast Guard to keep up the search. John Tower went to Galveston to help.

People today continue to tell hundreds of stories about John Tower that involve thousands of constituents.

DIGNITY AMIDST DIRTY ATTACKS

John Tower's love of his family and his commitment to honor and integrity almost cost him his Senate seat in the 1978 election.

In October of that year, only a few weeks before the voters went to the polls, his opponent Bob Krueger, along with Krueger's campaign manager, Gary Mauro, used a sleazy tactic that is the epitome of negative campaigning in their desperation to win. They took a story written by a nationally syndicated columnist about an unnamed U.S. senator whose taste in wine, women and song was legendary, and announced to the press that John Tower was the senator cited.

The press reacted in delight because most disliked Tower for his conservative views. They pushed the Krueger camp for more information and the Democrats fed it to them.

But their game came apart when the press finally descended on the syndicated columnist, who indicated that the Krueger camp had not told the truth and that the senator was not John Tower. The press was furious with the Democratic campaign and vilified Gary Mauro for making up the stories.

When candidate Krueger was pressed as to why he did not condemn the actions of Mauro and others in his campaign, he stated that he believed that's who John Tower was. And even though the column had not been written about John Tower, Krueger insisted it could have been.

These are the same unsubstantiated, unproven, untrue, sleazy stories that a

Democratic senator would use eleven years later to deny his enemy the post he most sought to serve his country.

When Krueger offered to shake Tower's hand in the last days of the campaign, John Tower disdained any contact with the man. A photo of Tower rejecting Krueger's handshake ran on the front page of 36 daily newspapers in the state. In only one paper did a story accompany the photo explaining why the handshake was refused.

The political tracking polls showed Tower's lead evaporate from nine points ahead to four points behind almost overnight. Some supporters wanted Tower to apologize—but Tower would never surrender, never retreat. Instead, he took John Connally's advice to stand his ground by going on TV and explaining his actions.

In a classic campaign commercial, the Senator went on TV. He showed the picture of the handshake and talked about the lies and innuendo that Krueger and his campaign had stated. He also talked of the pain this incident had brought to his daughters and his family. And finally, he spoke of the fact that as a Texan, he'd always been taught that a handshake was meant as a man's bond—his integrity and commitment—and as an extension of friendship.

On election night 1978, in what was to go down as one of the closest contests in Texas history, John Tower beat the odds and won re-election.

COUNTRY & WESTERN ROOTS

Perhaps the real John Tower was the country and western disc jockey named "Tex" Tower, whose radio jobs helped develop his voice and humor. From Beaumont to Waco his voice was heard long into the night. On occasion, you could even hear him sing a song or two with groups like "Possum Heap and the Melody Makers."

If John Tower hadn't become a senator he might have become an actor—or even a country and western singer.

I was present at John's last political event. It was last October in Dallas when he served as master of ceremonies at the Dallas Symphony Center at a fundraiser for Phil Gramm. There were no speeches, just "Tex" Tower, hamming it up on stage with Mo Bandy, Fred Travalena, Crystal Gayle, and the Gatlin Brothers. John Tower's presence at that event left everyone who was there with a special memory that will never be forgotten.

JOHN TOWER'S LEGACY

In sum, John Tower was a young teacher, father of three, and country western disc jockey. He came to the Senate a financially poor man with no stocks or bonds or real estate but rich in integrity. He retired with no stocks or bonds or real estate but with that enormous integrity still intact.

Even the liberal newspaper, *The Texas Observer*, which rarely had kind words for John Tower's politics, would write that he may have been the most honest man ever elected to the U.S. Senate.

When John Tower retired in 1984, he had a campaign war chest of almost two million dollars—all of which he could have converted to his personal wealth. Instead, he offered the money back to his contributors. Only a handful requested it. And the two million dollars which was not taken back did not go into his personal bank account. Rather, it funded a voter registration and get-out-the-vote effort which would guarantee his seat was won by Phil Gramm and that his state was carried by Ronald Reagan.

John Tower's integrity led President Reagan to select him to head the Commission to investigate the Iran-Contra affair, and it led President Bush to appoint him as chairman of the U.S. Intelligence Commission.

John Tower never stopped teaching. The men and women who served under him went on to great things. These include one who became a U.S. senator, three who went on to be congressmen, two who were appointed ambassadors, one who became a national security advisor, two others who became secretary of the Navy and secretary of the Air Force, and eight who served as special assistants to the president. Others served in prominent positions in and out of government.

The individuals whose life John Tower touched include the president of the United States, the vice president, governors, senators, congressmen, state legislators and patriots who still keep alive the dream of freedom he passed to them.

As we walk the road of the future, all of us who knew John Tower personally can best remember him by an act of love, an act of courage and an act of political commitment.

I know that the first hero of Texas, Ben Milam, would be proud that the words Deaf Smith used to honor him more than 150 years ago could also be used to honor this modern day hero.

Mourn that a teacher's spirit
a high heroic soul
His earthly light extinguished
and is blotted from the roll.

Where stand the bold of Texas
who nobly dare the fight
That liberty is waging
against the haughty hand of might.

Not a loftier heart ere perished
more generous and brave
With prouder scorn for coward acts
that make a man a slave.

To the true, the bold, the gallant
were his sympathy allied.
As a heart to heart of brother
by bond of blood is tied.

Pure were his patriotic virtues
unbound by the sordid love of self
Or from all that makes ambition crime
or stoops to earth to help.

He knew alone his country
in the hour of her need
To free and to exalt her
he saw no other need.

Like the earliest of our martyrs
to fall in freedoms cause
To spend the treasure of his blood
for liberty and laws.

As bright as they example
So bright shall be thy fame
And generations yet unborn
shall honor Tower's name.

Your students loved you. We'll miss you. Goodbye, "Mr. Chips."

Mr. SYMMS. Mr. President, I hope that some of my colleagues who have fond memories of this giant of an intellect, this outstanding chairman of the Armed Services Committee of the U.S. Senate, an enlisted man in the U.S. Navy who never forgot the enlisted men of the U.S. military, the person who really, when history is written, will be credited with starting and developing the two-party South, the first Senator elected since Reconstruction on the Republican ticket in the South, will read this report. I think it is just a very fine report. I urge my colleagues to look at it.

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

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

VIOLENT CRIME CONTROL ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 514, AS MODIFIED

Mr. SYMMS. Mr. President, I ask unanimous consent that amendment No. 514 be modified to reflect the changes I send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The modification will be incorporated.

The amendment (No. 514), as modified, is as follows:

At the appropriate place, insert the following:

SEC. . RACIAL AND ETHNIC BIAS STUDY GRANTS.

(a) FINDINGS.—The Congress finds that—

(1) equality under law is tested most profoundly by whether a legal system tolerates race playing a role in the criminal justice system; and

(2) States should examine their criminal justice systems in order to ensure that racial and ethnic bias has no part in such criminal justice systems.

(b) AUTHORIZATION OF GRANT PROGRAM.—

(1) IN GENERAL.—The Attorney General, through the Bureau of Justice Assistance, is authorized to make grants to States that have established by State law or by the court of last resort a plan for analyzing the role of race in that State's criminal justice system. Such plan shall include recommendations designed to correct any findings that racial and ethnic bias plays such a role.

(2) CRITERIA FOR GRANTS.—Grants under this subsection shall be awarded based upon criteria established by the Attorney General. In establishing the criteria, the Attorney General shall take into consideration the population of the respective States, the racial and ethnic composition of the population of the States, and the crime rates of the States.

(3) REPORTS BY STATES.—Recipients of grants under this subsection shall report the findings and recommendations of studies funded by grants under this subsection to the Congress within reasonable time limits established by the Attorney General.

(4) REIMBURSEMENT OF STATES.—Grants may be made to reimburse States for work started prior to the date of enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 to carry out the provisions of this section.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MITCHELL. Mr. President, I ask unanimous consent that the following amendments on a list which I will submit for printing in the RECORD, if this agreement is accepted, be the only remaining first-degree amendments in order to the bill; that any amendment whose subject matter is listed as unspecified must be relevant to the provisions of the bill; that any second-degree amendment must be relevant to the amendment to which it is offered; and that the prior agreement relative to firearms amendments remain in effect.

The PRESIDING OFFICER. Is there objection?

Mr. SYMMS. Reserving the right to object, I sense the frustration that the majority leader has. I know that he would like to have entered into this agreement that I shall in a moment or two object to. But I want to first say that there have been some objections to one of the amendments, the Wirth amendment, that was on the list, by Senators on our side from the Banking Committee. I have advised those Senators that there is still no limitation stopping Senator WIRTH from offering that amendment. But that objection is there.

There are other Senators that do not want to be limited to what amendments they may decide to come up with after they study the bill through the break. I will just say to my good friend, the majority leader, that I believe he has basically passed the Rubicon, so to speak, on this bill by getting the gun issue behind him. I do not think there will be a lot of amendments coming in. We are prepared on this side to start out on Monday, debate the Rudman amendment, have a vote on that, and I think the Bingaman amendment.

I believe that the leader may be able to get this agreement on Monday after Senators look at it.

But I do lodge objection to that request now.

The PRESIDING OFFICER. The request is not agreed to.

Mr. MITCHELL. Mr. President, I am deeply disturbed by the unwillingness of our Republican colleagues to permit prompt disposition of this bill.

For the past several weeks, President Bush has campaigned around the United States criticizing the Congress for not completing action on the transportation bill and the crime bill. Throughout that entire period, sometimes on the very day on which the President was making his campaign speeches of criticism of the Congress, Republican Senators were preventing the Senate from completing actions on those very bills. And, of course, that pattern continues today.

We are trying to complete action on the crime bill which the President says he wants. We are prevented from completing action by Republican Senators, and then the President, leader of the Republican Party, will go around the country and give campaign speeches criticizing the Congress without once ever acknowledging that the delay is caused by members of his own party.

The Presidents statements are incomplete, inaccurate, and highly misleading. I just want to say I understand and respect the right of our colleagues to object to this agreement, just as they objected to bring up the highway bill, just as they objected to moving forward on the highway bill, just as they have objected to moving forward on this bill. They have that right.

But I do not think the President has the right in these circumstances to go around the country giving these campaign speeches, making misleading statements about the inability of the Congress to complete action without disclosing to the American people that the reason we are not able to complete action is because of the unwillingness of Republican Senators to cooperate in the effort to move this legislation forward.

I deeply regret that. I can do nothing about it, of course. I accept, in perfect good faith, the statement made by my good friend and colleague of the reasons for these objections. There have been reasons for all of the objections, and they are permitted under the rules.

But I hope that the American people will understand that when these campaign speeches are made by the President, they are misleading, because they do not disclose the full truth of the reasons for the delays, in bringing about complete action on this legislation.

The list of amendments follows:

KNOWN DEMOCRATIC AMENDMENTS TO S. 1241, CRIME BILL

Kennedy: Customs service; substance abuse.

Metzenbaum: OSHA; prisoner location.

Levin: Emergency rooms (w/Kennedy); death penalty (colloquy only 15 min.); unspecified.

Kohl: Community coalition; relative to rape; women in prison.

Wirth: Financial investment status.

Bingaman: Literacy—state prisons.

Lieberman: Immunity statute.

Fowler: Hunters rights Federal lands.

Bradley: Gangs sports mentor programs.

Moynihan: Ammunition ban certain calibers; Federal firearms licensing; ammunition report requirements.

Graham: Police corps; racial bias.

Wofford: Environmental crimes.

Kerry: Ban export to foreign countries of assault weapons; drug treatment on demand.

Cranston: Unspecified.

Mitchell: Unspecified.

Heflin: Computerization of persons adjudged mentally incompetent.

Riegle: Additional assistance high violent crime areas.

DeConcini: Outlaw gangs.

Leahy: FBI.

Bentsen: Re: Simon IRS notification language adopted earlier (Simon #389); striking other possible "blue slip" material—Secs. 812F, 1228, 1231, and 1232.

BIDEN

1. Violence Against Women.
2. Habeas—Full and Fair Strike.
2B. Habeas—Full and Fair Strike #2.
3. Habeas—Full and Fair Definition #1.
4. Habeas—Full and Fair Definition #2.
4B. Habeas—Full and Fair Definition #3.
5. Habeas—Counsel Standards.
6. Habeas—Retroactivity.
7. Habeas—Federal Habeas Reform.
8. Police corps.
9. Police Bill of Rights.
10. Rural Crime.
11. D.E.A.A.
12. Youth Violence.
13. Drunk Driving.
14. Federal Law Enforcement.
15. Boot Camps.
16. Regional Prisons.
17. Crime Victims.
18. Exclusionary Rule Reform.
19. Organized Crime Strike Forces.
20. Crime Related.

KNOWN REPUBLICAN AMENDMENTS TO THE CRIME BILL

Brown: Waiver of waiting period.

Rudman: Habeas corpus; police.

Helms/Thurmond: Child pornography.

Seymour: Anti-Gang amendment; exploitation of aliens.

Specter: Grants for State prosecutors in capital cases; drug court division; State prisoner education project amendment; Habeas Corpus/counsel standards.

Gramm: 1. Mandatory minimum penalty for firearm violations; 2. Mandatory minimum penalty for drug use in prisons; 3. Prison release program; 4. Deportation of criminal aliens.

Helms: Oliver North; sexually explicit violence on T.V.; crime related; rape victims.

Stevens: Gun provision substitute.

Symms: Gun related; enterprise zones.

Kasten: Prison literacy.

Murkowski: Gun control provision.

Dole: Violence against women; AIDS (medical profession disclosure); leadership; outbound mail.

Thurmond: Sexually explicit advertising; 2 contingency fees; strike exclusionary rule; 1988 death penalty procedures; capital funding of prosecutors; Habeas Corpus/Fed. System; strike Bill of Rights; strike D.O.J. drug division; strike Police Corp; police officers bill of rights; strike and insert exclusionary rules provision; exclusionary rule; full and fair definition; 2 Habeas Corpus; 3 crime related.

Simpson: Gun provisions; criminal alien deportation.

Nickles: Testing for sexual offenses.

Hatch: Prior evidence/sex offenses.

Cochran: Law enforcement agency rule.

Grassley: Rape shields.

McConnell: Tech. to child registration.

AMENDMENT NO. 421

Mr. BROWN. Mr. President, as ranking member of the Subcommittee on Technology and the Law, of the Senate Judiciary Committee, and as an original cosponsor of this legislation, I am pleased to join with Senators LEAHY and KOHL in offering S. 1322 as an amendment to S. 1241, the crime bill.

S. 1322 represents the culmination of the efforts of the Subcommittee on Technology and the Law to clarify and

strengthen the existing Federal law dealing with computer abuse crimes. The current measure under consideration is identical to S. 2476, the Computer Abuse Amendments Act of 1990, which passed the Senate unanimously in the last Congress.

This measure has the support of computer manufacturers and the software industry. Both groups believe S. 1322 strikes the proper balance between the need for strong laws against computer abuse and the need to promote the free flow of information across computer information networks. The Department of Justice has stated that the bill is an improvement over existing Federal laws.

During the past decade, computer information networks have become an integral part of communications in modern society. Technological advances in the development of computer networks have enabled network users in different States and even different countries to communicate and exchange information. Computer networks now provide vital links for the exchange of financial information, scientific research data, and national security information. Unfortunately, the rapid technological advances that have led to the proliferation of computer information networks also have provided computer criminals with additional opportunities to introduce harmful computer worms and viruses into computer systems.

Despite the rapid technological advances in the computer manufacturing and software industries, computer security technology has not been able to keep pace with the spread of new computer abuse techniques. The existing Federal law governing computer abuse, the Computer Fraud and Abuse Act of 1986 [CFAA], has not been able to deal effectively with the new forms of computer viruses and worms which have emerged in the past 5 years.

With the number of microcomputers used in the workplace expected to increase from 10 to 34 million in the next 3 years, computer crime will become a much bigger concern for businessmen and law-enforcement officials. A recent study by the accounting firm of Ernst & Whinney, cited in the National Institute of Justice Journal, estimated that computer crime now causes between $3 and $5 billion in damages each year. Three-quarters of the law enforcement officers responding to a National Institute of Justice survey identified computer crime as an issue likely to take up a significant part of their workload in the future.

S. 1322 amends the CFAA and brings Federal computer crime statutes up-to-date with recent advances in computer technology and computer abuse techniques. The CFAA had created a felony violation for gaining unauthorized access to a computer used either by or for the Federal Government. This definition of a felony violation allowed computer criminals, who were able to introduce harmful computer viruses into an information network without illegally accessing a computer, to escape prosecution. S. 1322 closes this loophole by making the main element of a felony violation under the CFAA the malicious intent of a perpetrator in transmitting a computer worm or virus designed to damage or disable a computer network.

The bill also expands the scope of criminal offenses under the CFAA to include incidents of computer abuse which do not rise to the level of a felony violation. S. 1322 creates a misdemeanor violation for transmitting a computer program with reckless disregard for the potentially harmful effects of the program on other computers.

In recognition of ever-increasing numbers of computer information networks, the bill expands the scope of statutory protection against computer abuse to cover all computers used in interstate commerce or communications, not just computers used by or for the Federal Government.

S. 1322 also creates a civil cause of action for victims of felony computer abuse violations under the CFAA. The civil remedy will be limited to recovery for economic loss or damages resulting directly from the felony violation. The addition of a civil cause of action to the CFAA will strengthen the existing Federal law and provide an effective deterrent against computer abuse activities.

Passage of this legislation will serve to continue to promote the rapid growth of computer information networks, while at the same time updating Federal computer crime laws to take into account the new varieties of computer abuse techniques. S. 1322 will help clarify and strengthen the laws that are so essential to protect the computer information networks on which so many people now depend.

As an original cosponsor of S. 1322, I urge the Senate to adopt this measure as an amendment to S. 1241, the crime bill.

Thank you, Mr. President.

Mr. LEVIN. Mr. President, I would like to ask a question of the distinguished majority leader, one of the sponsors of the Brady Handgun Violence Prevention Act, title XXVII of the Violent Crime Control Act (S. 1241).

The legislation directs the Attorney General to establish a grant program to be used "for the creation of a computerized criminal history record system or improvement of an existing system," and "to defray the cost to State and local law enforcement agencies in conducting background checks on prospective handgun purchases."

Michigan has, at great expense, purchased an automated fingerprint identification system [AFIS]. As a result, Michigan's computerized criminal records included fingerprints. Michigan's AFIS has enabled State and local law enforcement to solve over 900 cases they could not have otherwise solved. In one such case, Michigan police officers were able to identify and convict a man who abducted and sexually assaulted a 4-year-old girl from a latent fingerprint on her clothing. This man is now behind bars.

My question to my colleague is whether the operation and improvement of an AFIS would be an eligible expense under this grant program.

Mr. MITCHELL. It is our intention that it be an eligible expense.

Mr. LEVIN. I thank the majority leader for his cooperation and his leadership on this important legislation.

AMENDMENT NO. 416

JUVENILE GANG PROVISIONS

Mr. KOHL. The Juvenile Justice Subcommittee which I chair has jurisdiction over the Juvenile Justice and Delinquency Prevention Act and all matters pertaining to children, families, the courts, and the law. As such, the subcommittee has jurisdiction over juvenile gang issues.

Mr. BIDEN. I agree with my colleague from Wisconsin.

Mr. KOHL. Therefore, my subcommittee intends to review the juvenile gang provisions that are a part of this omnibus crime legislation, reserving the right to amend them accordingly.

Mr. SIMON. Because of my interest in education and health care, I would like to play a role in reshaping the gang provisions.

Mr. BINGAMAN. And I would like to participate as well, given that gang prevention will be critical in international border areas.

Mr. BIDEN. I welcome the review and possible subsequent changes in the juvenile gang provisions I have offered as a part of S. 1241 by the Subcommittee on Juvenile Justice. As a member of that subcommittee, I look forward to working with my colleagues in revisiting these issues.

JULY AGENDA OF LEGISLATION TO COME BEFORE THE SENATE

Mr. MITCHELL. Mr. President, I now submit for printing in the RECORD a list of legislation that may be considered by the Senate in the July legislative period. In accordance with my practice, this gives notice to Senators of legislation that may be considered during the upcoming legislative period. As the document states, and as will be printed in the RECORD, this is a nonexclusive listing which is alphabetized and not ranked according to priority. But this does give Senators the best and most timely and accurate notice possible at this time of the measures that we will be considering.

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

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

LEGISLATION THAT MAY BE CONSIDERED BY THE SENATE IN JULY

Appropriations bills
Cable Television Consumer Protection Act, S. 12
China MFN
Civil Rights Act of 1991
Corporate Average Fuel Economy Improvement bill [CAFE], S. 279
Defense authorization bill
Education Improvement Act, S. 2
Family and Medical Leave Act, S. 5
Federal Facilities Act, S. 596
Foreign Aid/State/USIA authorizations
"Gag" rule regulation repeal, S. 323
Motor voter bill, S. 250
National Energy Security Act, S. 1220

As well as any other legislation that the Leader may propose for the Senate's consideration; this is a nonexclusive listing, which is alphabetized and is not ranked according to priority.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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

TRIBUTE TO MIKE MASARU MASAOKA

Mr. INOUYE. Mr. President, it is with great sadness that I address my colleagues today. Although we all realize that death is inevitable, it is always difficult to accept its finality when it involves a close and dear friend of many years. The passing of Mike Masaru Masaoka is indeed a very sad event, but one that should remind us of the glories of battles fought and battles won.

Mike was a noble American patriot; the most illustrious leader of the Japanese American Citizens League; and a crusader who improved the plight of the oppressed and the downtrodden. Mike dedicated his life to redressing the inequities suffered by Japanese-Americans. He worked tirelessly to convince Americans to live up to the ideals upon which this Nation was founded—liberty and equal justice under law. In doing so, Mike helped to improve the civil rights of all minorities.

In 1941, Mike left his position at the University of Utah to work on a full-time basis for the Japanese-Americans Citizens League. He called upon the JACL to broaden its scope and become a national organization open to all people who wanted to end discrimination against Japanese-Americans. He worked diligently to spread the message that Japanese-Americans were loyal to this great Nation. Mike wrote a statement which eloquently told of his love for America. U.S. Senator Elbert D. Thomas inserted it into the CONGRESSIONAL RECORD in May 1941. It stated:

I am proud that I am an American citizen of Japanese ancestry for my very background makes me appreciate more fully the wonderful advantages of this Nation. I believe in her institutions, ideals and traditions; I glory in her heritage; I boast of her history; I trust in her future. She has granted me liberties and opportunities such as no individual enjoys in this world today. She has given me an education befitting kings. She has entrusted me with responsibilities of the franchise. She has permitted me to build a home, to earn a livelihood, to worship, think, speak and act as I please—a free man equal to every other man.

Although some individuals may discriminate against me, I shall never become bitter or lose faith, for I know that such persons are not representative of the majority of the American people. True, I shall do all in my power to discourage such practices, but I shall do it in the American way; aboveboard, in the open, through courts of law, by education, by proving myself to be worthy of equal treatment and consideration. I am firm in my belief that American sportsmanship and attitude of fair play will judge citizenship and patriotism on the basis of action and achievement, and not on the basis of physical characteristics.

Because I believe in America, and I trust she believes in me, and because I have received innumerable benefits from her, I pledge myself to do honor to her at all times and all places; to support her Constitution; to obey her laws; to respect her flag; to defend her against all enemies, foreign or domestic; to actively assume my duties and obligations as a citizen, cheerfully and without any reservation whatsoever, in the hope that I may become a better American in a greater America.

Mr. President, about seven months after this beautiful and profound statement was heard in this chamber, the United States was at war with Japan. Mike and I volunteered and served in the 442d Infantry Regimental Combat Team. The difference was that Mike volunteered from behind barbed wires—he volunteered from within the Manzanar Relocation Camp. He stood tall to prove his patriotism, and to lay to rest any doubts about the loyalty of Japanese-Americans. Many made the supreme sacrifice to demonstrate their loyalty to and love for America in the hope that future generations of Japanese-Americans would enjoy a better life without the need to prove their loyalty, and without discrimination.

The war between nations may have ended in 1945, but the fight for equal protection and justice had just begun. It became a burning passion for Mike. He dedicated his life to assure that the lives of our comrades, including his brother, would not be sacrificed in vain. Mike moved to Washington, DC, and continued his fight. This time the battle was against unjust and discriminatory laws and the enemies, bigotry and racism.

Mike was the founder of Japanese-American redress—an enlightened and bright chapter in our Nation's history which has helped to cleanse the darkness of internment. It is symbolic that the Civil Liberties Act was signed into law in the 100th Congress, the Bicentennial Commemoration of the Constitution of the United States. On the 100th birthday of the United States Constitution, it was most fitting that through Japanese redress, we, as a nation, apologized for the wrongs committed in contravention of the letter and the spirit of this guiding document. In large part, Mike was responsible for making it a reality.

Mr. President, the passing of Mike Masaru Masaoka will leave a void in the ranks of his comrades in the 442d, and for the many others who knew, respected, and loved him. It has always been my high honor to know, to seek counsel and to work with this giant of a man. My loss of a friend is our Nation's loss of a great American patriot.

My heart goes out to Mike's beloved wife and companion, Etsu. Though mere words may not suffice in expressing our sadness, it must comfort her to know that there are many in this land who share her burden of grief.

AMNESTY INTERNATIONAL REPORT—HUMAN RIGHTS ABUSES IN NORTHERN IRELAND

Mr. KENNEDY. Mr. President, a recent Amnesty International report on human rights in Britain and Northern Ireland raises serious concerns about abuse of detainees, unfair trials and the shoot-to-kill policy of British security forces in Northern Ireland.

Of particular concern is the treatment of those taken to police interrogation centers after being arrested under antiterrorist legislation. Suspects are frequently denied access to an attorney, sometimes for up to 48 hours. Many are severely beaten and some are beaten so hard that their eardrums are perforated. In 1987 and 1988, a total of 963 complaints of police brutality were made, but only 13 were considered by investigators to be prima facie evidence of at least a disciplinary offense. Successful prosecution is virtually nonexistent.

Such brutal treatment inevitably raises questions about whether suspects can have a fair trial. They have been prevented from having an attorney during interrogation, their cases often rest solely on confessions likely to have been coerced, and evidence is frequently withheld from defense attorneys. The cases of the Birmingham Six, the Guildford Four and the Maguire family are well-known examples of blatant miscarriages of justice.

Police conduct is often unacceptable. In the case of the Birmingham Six, 14 of the 25 officers involved were found to have lied or proved unreliable. In the

case of Anthony Wellington, who was convicted for armed robbery in 1988, tests showed that three of the eight pages of his alleged confession were inserted at a later date. Yet authorities are rarely held accountable for their actions. Investigations into allegations of army and police misconduct are kept internal and are slow in being carried out, and the findings are usually kept secret.

In 1982, Amnesty International first raised concerns about the use of lethal force by security forces. That year, members of the Royal Ulster Constabulary killed six unarmed people. A false explanation of events was concocted by senior police officials, who directed subordinates to lie about the events. When John Stalker, who was appointed to investigate the incidents, apparently uncovered important evidence, he was dismissed from the investigation under suspicious circumstances suggesting a further coverup. The findings of his successor were never published, and no police officer was convicted in any of the killings.

Since 1969, only two members of the security forces have been found guilty in any of the numerous killings that have taken place in suspicious circumstances. One received a suspended sentence on a manslaughter charge. The other was sentenced to life in prison for murder, but was released after less than 3 years and reinstated in the army.

Since court prosecutions against members of the security forces are few, the coroner's inquest often becomes the primary method of investigating suspicious deaths. Yet inquests are fraught with problems which frustrate attempts to reach the truth. Legislation dating back to 1959 prevents inquests from naming those responsible for unlawful killings. Members of the security forces are not required to give oral evidence at inquests, and forensic evidence and witness statements do not have to be released before the start of the inquest. Free legal aid is not available, and it is difficult for many families to obtain adequate representation at the inquests. There are often significant delays between the death and the inquest—six cases from 1982 are still in limbo, with the victims' remains yet to be examined by a coroner.

Examples of controversial killings are numerous. In one incident last year, three men were killed by undercover members of the British Army as they were committing a robbery. Witnesses say that the soldiers were not threatened and yet no effort was made to arrest the suspects or avoid the use of lethal force. Witnesses also say that two of the robbers were shot while lying on the ground. The unarmed driver of the getaway car was shot six times and the fatal shot was fired at close range. The 2 others were shot at least 10 times each. No officer was prosecuted in the case.

Two young people were shot and killed last year while joyriding in a stolen car. Authorities say they fired after the group drove through an army checkpoint and struck a soldier. Witnesses say there was no checkpoint and no one had been hit.

In December, Fergal Caraher was killed when the British Army opened fire on him and his brother in Cullyhanna. The army claimed that the brothers drove through a checkpoint, but witnesses claim they stopped, spoke with the soldiers and were shot as they drove away. Because of their dissatisfaction and lack of confidence in the official inquiry, Mr. Caraher's parents have initiated an independent inquiry.

In the past 7 months, seven people have been killed by the security forces, in circumstances suggesting that the persons were killed while carrying out, or about to carry out, violent activities themselves. I hold no brief for IRA violence. But that is no excuse for British forces to execute suspected members of the IRA on the spot, instead of apprehending them, if possible, without the use of lethal force. As long as these suspicions linger, confidence in the forces of law and order is undermined.

A further issue of great concern is the problem of collusion between the security forces and Protestant paramilitary groups. In 1989, it was discovered that the security forces had handed over police files on Catholics suspected of involvement with the IRA to such groups. Protestant extremists admit they used the information contained in these files to assassinate one man and target several other alleged IRA operatives. An investigation led by a British chief constable, John Stevens, followed, but no members of the RUC were charged.

Despite the Stevens inquiry, allegations of collusion continue. In March, four Catholics were killed by Protestant paramilitaries in Cappagh, an area heavily patrolled by British security forces. The perpetrators were able to move quickly in and out of a nationalist area, normally under heavy surveillance by the security forces, and precisely target their victims. Again, the question is whether this attack could have been carried out without the help, or at least the acquiesence, of the security forces.

The rule of law is the bedrock of our society and the touchstone of justice. Without it, no system of democracy can survive. Compromising the rule of law, in whatever cause, undermines confidence in the system of justice and ultimately in government itself. No society can afford that. Obviously, the social fabric in Northern Ireland is under heavy strain, suffering from over two decades of violence and upheaval. But the tragedy will only deepen if the rule of law itself becomes a victim of the violence.

Earlier this year, following the release of the Birmingham Six, the British Government announced that a Royal Commission would be established to review the criminal justice process in the United Kingdom. Last month, the Commission was officially created under the chairmanship of Viscount Runciman. I join in calling on the British Government to extend the mandate of the Commission to include Northern Ireland, to establish an independent judicial inquiry into suspicious killings by the security forces, to institute government procedures to ensure that detainees are not abused, and to put an end to those human rights abuses.

Mr. President, I ask unanimous consent that recent news articles on the Amnesty International Report and related issues may be printed in the RECORD.

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

[From the Washington Post, June 8, 1991]

AMNESTY ACCUSES BRITAIN OF HUMAN RIGHTS ABUSES

(By Glenn Frankel)

LONDON, June 7.—Amnesty International today accused Britain of seriously undermining human rights, especially in Northern Ireland, and charged that the government frequently covers up illegal actions by security forces.

The London-based human rights organization outlined a long list of allegations—including ill-treatment of suspects, unfair trials, misuse of national security as justification for arrests, killings of suspects without warning, abuse of asylum seekers—in which it said the government had shown little regard for individual rights. And it said Britain's record on many of these issues had actually worsened in recent years despite the government's stated commitment to international treaties.

"This report outlines the persistent failure of the British government to deal with some of the most fundamental allegations that can be made when it comes to human rights," said Amnesty spokesman Robert Reoch.

The report's conclusions are likely to be embarrassing for a society that depicts itself as the foundation of Western legal values and for a government whose officials often cite Amnesty's findings in their condemnations of Third World governments.

The government said it would examine the report in detail and promised a reply from Home Secretary Kenneth Baker. A Home Office spokeswoman said: "We don't accept at all its general conclusion. In some instances the report seeks to draw those conclusions from a small number of individual cases, and it is sometimes selective in its use of statistics and fact."

Several miscarriages of justice in mainland Britain have been exposed in recent months—including a case in which police and forensic experts allegedly falsified or distorted evidence leading to the convictions and long-term imprisonment of 17 people of Irish origin for terrorist bombings. These have led to the establishment of a royal commission charged with broadly reexamining

the British criminal justice system. But Amnesty said it wants the mandate of the commission extended to include Northern Ireland.

British authorities in the province, which has undergone more than two decades of sectarian violence, have used anti-terrorism laws that Amnesty said offer fewer safeguards and more opportunities for abuse. "Steps that have been shown to prevent ill-treatment, like bringing suspects before a judge shortly after arrest and allowing lawyers to be present during interrogation, are not followed when people are arrested under anti-terrorist laws," said the report.

It said it wants an independent judicial review into all the alleged "shoot-to-kill" incidents since 1982 in which soldiers or police have shot suspects, many of them unarmed, often without warning.

"The organization found disturbing the evidence that police investigations may have been deliberately superficial in order to protect security force personnel," the report said.

The "shoot-to-kill" issue arose again this week when an undercover commando squad ambushed and killed three known IRA gunmen without apparent warning. Two of the men were armed and all three had long histories of involvement in IRA hit squads, according to police.

The report said rules on the use of lethal force for police and soldiers were inadequate and noted that the regulations themselves were secret documents. More than 300 people have died in disputed killings by security forces in the province since 1969, the report said, but it alleged that only 21 cases had been brought to trial and that only one soldier had been convicted of murder. The soldier in that case was sentenced to life imprisonment but released after two years and reinstated in the army, according to Amnesty.

The IRA's legal political wing, Sinn Fein, said the report demonstrated Britain's "systematic abuse of human rights." But the execution of an alleged police informer, whose body was found in Londonderry this morning, raised new questions about Sinn Fein's own commitment to human rights. One of those held for questioning was Hugh Brady, a Sinn Fein city councilman.

[From the New York Times, June 2, 1991]

FAITH IN BRITISH JUSTICE IS SHAKEN BY FORCED CONFESSIONS AND FALSE JAILINGS

(By Craig R. Whitney)

LISBURN, NORTHERN IRELAND.—Noel R. Bell nervously clasped his hands together as he sat at a table with his parents in the visitors' center at Maghaberry Prison and talked about the confession, seven and a half years ago, that put him behind bars for life for a murder he says he had nothing to do with.

"I just told the police what I thought they wanted to hear," Mr. Bell, who is 27 years old, said in the accent of his native Armagh. "I was afraid they'd keep beating me until they got it. I was sure it would all be straightened out, like a joke. It sounds naive, doesn't it?

A few months or years ago, such an asssertion might have been dismissed out of hand, because Mr. Bell is a Protestant, a member of the British Army's Ulster Defense Regiment who was convicted of killing a Roman Catholic. Links between the security forces and illegal Protestant paramilitary groups that have joined in battle against the Irish Republican Army paramilitaries are widely accepted as fact in Northern Ireland, and the idea that the police would torture a Protestant soldier would have struck most people here as absurd.

But elsewhere in Britain as well as here in Ulster, faith in the British criminal justice system, and in the police, has been severely shaken by a series of miscarriages of justice that have sent innocent people to jail for long sentences.

What most of them show is what many common criminals in nonpolitical cases have been saying for a long time, a refrain now echoed by growing numbers of officials and scholars. They say that behind what may seem to be the genteel image of the unarmed British bobby is a police force that is not above "putting the boot in" to get confessions out of people they think are guilty, a prosecutorial system more geared to securing convictions than to insuring that justice is done, and a judiciary slow to recognize that there is any problem.

So great is the concern that in March, the Government announced the formation of a royal commission under Lord Runciman of Doxford, a Cambridge University sociologist and scholar, to study the need for changes in criminal law, police practice and trial procedure. "We must not be carried away by a quite erroneous belief that everything in our current arrangements is flawed," Home Secretary Kenneth Baker told a police conference last month. "However, I believe that it is now necessary to undertake a review of the criminal justice process."

CASES AGAINST I.R.A. ARE MOST NOTORIOUS

The most notorious cases have involved Irish Catholics accused of acts of terrorism on behalf of the outlawed Irish Republican Army, which seeks the end of British control in Protestant-dominated Northern Ireland. Mr. Bell is similarly accused, but he is a Presbyterian who with three other members of the Ulster Defense Regiment confessed to plotting to murder a Catholic, Adrian Carroll, who was killed outside his home in Armagh on Nov. 8, 1983. Mr. Carroll, 24, belonged to a family of supporters of Irish unification, and his brother Roddy had been shot dead by a police anti-terrorist squad in unexplained circumstances less than a year earlier.

The four made their confessions, the only evidence directly tying them to Mr. Carroll's murder, while they were in police custody in the notorious Castlereagh holding center, without access to legal counsel.

The men maintained that they were tortured into confessing, with words the police had put into their mouths. The judge who tried the case without a jury did not believe them, nor did the three other judges who heard their appeal in 1987.

The police are now reinvestigating some aspects of the case, and Mr. Bell and the others hope the results will cause Peter Brooke, the Northern Ireland secretary, to refer their case back to the Court of Appeal.

Except for their religious and political connections, the case of the "U.D.R. Four" falls into a familiar pattern.

The "Guildford Four," the "Birmingham Six" and the "Maguire Seven" all involved Irish defendants connected by the authorities with a wave of terrorist bombings in the Midlands of England in the mid-1970's, part of the Irish Republican Army's long campaign to force Britain to leave Northern Ireland.

All were convicted either on the basis of forensic evidence that later turned out to be flawed or on the basis of confessions they said were beaten or coerced out of them by the police.

"MAGUIRE SEVEN" HOPE TO BE CLEARED

The "Maguire Seven," a family group convicted in 1974 of handling nitroglycerine used to make bombs, served sentences of between 4 and 14 years, and one of them died while in prison in 1980. The only evidence against them at the trial was the results of forensic tests showing traces of the explosive on their hands and gloves.

A public inquiry into the case last year found that scientists testifying about the tests had concealed evidence that cast doubt on these results, and that the convictions should be thrown out. This month, the defendants expect to clear their names at the Court of Appeal in London.

In the "Guildford Four" and "Birmingham Six" cases, Irish defendants accused of bombings that killed more than a score of people in Guildford and Birmingham in 1974 also confessed in police custody before being charged.

The defendants argued later that their confessions had been beaten out of them by the police. New evidence eventually led the prosecution to acknowledge that the convictions had been invalid.

The "Birmingham Six"—won their freedom on March 14 after spending more than 16 years in jail for the bombings of two pubs in Birmingham in 1974.

This year, for the first time, the Government acknowledged that forensic tests had been flawed and misleading, and three appeals judges invalidated the confessions.

REOPENING A CASE IS OFTEN DIFFICULT

"The convictions are both unsafe and unsatisfactory," concluded the judges, using legal language to indicate reasonable doubt about the guilt of the defendants. But the judges did not say whether they thought that these men, who had spent most of their adult lives in jail, were innocent.

After conviction and initial appeal, reopening a case is a difficult procedure.

As one lawyer tells it, the judges are often on the defensive. "You find there's a private war going on, where the judiciary feel it's an impertinence to refer a case back to them," the lawyer said.

It was the freeing of the Birmingham Six after so many years that led to the formation of the royal commission, which Mr. Baker told the House of Commons would work to "minimize so far as possible the likelihood of such events happening again."

"This will be the most serious opportunity in generations to address the question of what is going wrong," said Gareth Peirce, a solicitor who represented five of the six in their last appeal. But she said she doubted that the commission would concern itself very much with what she views as the fundamental reason why such blatant abuses of police authority could take place repeatedly.

"We don't have a written constitution in this country," Mrs. Peirce said. "Nobody goes around in this country thinking we have rights—the state grants us rights."

"The American Constitution was written by people who realized that the majority would always be tempted to take away the rights of the minority," she said. "In all these cases in Britain, we're talking about minorities who in practice have been deprived of their rights."

ABUSES NOT LIMITED TO TERRORISM CASES

The alleged abuses are not limited to terrorism cases by any means.

After Police Constable Keith Blakelock was hacked to death in a race riot in North London in 1985, thousands of police officers descended on the area and arrested 369 peo-

ple. Six of those arrested were later charged with the murder, all solely on the basis of the confessions they had made while in police custody. Three of them, adult men, were convicted and sentenced to life imprisonment. All three have asked for leave to appeal, but only one, Engin Raghip, has had his case referred back to the Court of Appeal, which is expected to hear his case by this fall.

But three others, all juveniles, were acquitted by the trial judge, including a 13-year-old boy who confessed after being held 48 hours in a police cell, clad only in his underpants and covered with vomit. The trial judge, reprimanding the police detective in charge of the case for forgetting that the suspect was only a child, described his purported admissions as "fantastical," "make-believe" and "ritualistic."

In days gone by, suspects "helping police with their inquiries" and later charged with crimes could expect little public sympathy if they claimed innocence. But public confidence in the police has fallen sharply in the last decade, according to surveys made by the Home Office, which also found that many people believed that complaining about police behavior was useless.

The independent Police Complaints Authority investigated 4,879 complaints of assault by the police in 1990, and disciplinary charges were brought in 68 of them. Of 1,038 other complaints of irregular arrest, 11 resulted in charges.

An unusual concentration came from the West Midlands Serious Crime Squad, which was dissolved by the Government in 1989. The West Yorkshire police are now investigating more than 700 arrests made by the squad, and there are 15 other appeals by men who claim that detectives from it fabricated evidence against them.

SOME SUGGEST CURBS ON CONFESSIONS

But there is far less concern about limitations of individual rights by perfectly legal means. A majority in the House of Commons can pass laws limiting the rights of people who are viewed as a threat, and British governments since the early 1970's have repeatedly used this power. The Prevention of Terrorism Acts passed since 1974 empower the police to detain people suspected of membership in organizations like the I.R.A. for up to a week without charge. In Northern Irleand, judges have been trying terrorist cases without juries since 1973.

What to do? Lord Scarman, a distinguished retired jurist who as Leslie G. Scarman once sat on the appeals bench in London, has suggested that confession alone should not be enough to convict a person of a crime, unless it is made in open court or in the presence of a solicitor or other independent witness.

Others believe that only a written bill of rights offers meaningful protection against legal abuses.

For some, like the Birmingham Six, any reform will come too late.

The Home Office has given each of them and the Guildford Four 50,000 pounds, $85,000, as interim compensation for their illegal incarceration for 16 and a half years, according to William Power, who is one of the six, but a spokesman for the Home Office said he could not confirm the amount. The final awards would be based on individual estimates of lost earnings over the period, with additional amounts for "pain and suffering," the Home Office said.

[From the New York Times, June 27, 1991]

CONVICTIONS OVERTURNED FOR SEVEN IN I.R.A. BLASTS

(By Steven Prokesch)

LONDON, June 26.—A British appeals court overturned today the 1976 convictions of six members of a family of Irish Londoners and a friend who had served long prison sentences for supposedly operating a bomb factory for the Irish Republican Army.

The ruling marks the third time in less than two years that a British appeals court has overturned the convictions of groups that were supposedly involved in the I.R.A.'s bombing campaign in Britain in the 1970's that generated outrage in Britain and a backlash against the Irish.

One of the seven, Patrick (Guiseppe) Conlon, died in 1980 while serving a 12-year sentence. The others completed their sentences of between 4 and 14 years. The last was released in 1990.

The seven are Annie Maguire, who is now 54; her husband Patrick, 57; their sons, Patrick Jr., 29, and Vincent, 32; Shaun Smyth, Mrs. Maguire's 52-year-old brother; Mr. Conlon, who was related to the Maguires by marriage, and Patrick O'Neill, 49, a family friend.

A Government inquiry led by Sir John May last year concluded that the forensic evidence used to convict the seven—traces of nitroglycerine found on their hands and on Mrs. Maguire's plastic gloves in the family's London house—was unreliable.

In the appeal proceedings, the Government's Director of Prosecution also said the convictions were unsafe and unsatisfactory.

Sir John criticized the Government's scientists, saying their tests were so flawed they could not be relied upon and that they had concealed experiments that cast doubt on the case.

But the court today cleared the defendants only on the grounds that "the possibility of innocent contamination cannot be excluded." The judges said the defendants could have been contaminated by touching a towel that others who had handled nitroglycerine had touched and that similarly the nitroglycerine on the gloves did not necessarily come from the seven.

In October 1989, a British appeals court overturned the convictions of three Roman Catholic men born in Northern Ireland and an English woman who had been given life sentences in 1975 for killing five people in the bombing of a bar in Guilford, England, in 1974. The four maintained that their confessions had been forced from them. Two of them, one of whom was Mrs. Maguire's nephew, mentioned her name among many others, which led the police to raid the Maguire house.

Last March, six Roman Catholic men born in Northern Ireland were freed from prison after serving more than 16 years of life sentences given to them for supposedly bombing two bars in Birmingham, England, in 1974, killing 21 people. Confessions and forensic evidence were discredited.

These miscarriages of justice have caused the Conservative Government to order a sweeping review of the British legal system.

Some of those involved in the case were angry that the court ruling seemed to leave the possibility that the seven had been involved with the I.R.A., which is fighting to force the British from Northern Ireland.

Bridie Brennan, daughter of the late Mr. Conlon, said: "My father is innocent. Justice hasn't been done. There is no justice in this country."

Patrick Maguire Jr. attacked the I.R.A.: "Justice will never be done until the men and women who plant bombs stop. It is because of those sort of people that the likes of us get into trouble."

BALTIC FREEDOM DAY

Mr. PRESSLER. Mr. President, I would like to take a moment to acknowledge Baltic Freedom Day, which occurred June 14. Each year I have cosponsored the legislation that commemorates the hopes and dreams of the Baltic peoples to be free.

As former Deputy Assistant Secretary for Human Rights and Humanitarian Affairs, Paula J. Dobriansky noted in a 1989 address before the Baltic American Freedom League, the Baltic nations have struggled throughout history to become free, independent lands. These lands often were conquered by invading forces. Yet, under every occupying force, the Baltic peoples have maintained and even strengthened their deeply rooted desire for freedom.

In 1918, the Baltic peoples' dreams for self-determination came true. From that year until 1940, when the Soviet Union ruthlessly invaded and conquered their lands, the Baltic peoples lived under their democratic governments. Furthermore, they demonstrated a strong economic ability as independent countries. Tragically, all this was lost when the Soviet Union subjugated these hard-working peoples and instituted a reign of terror that will never be forgotten.

Even under the oppression of the U.S.S.R. the spirit of the Baltics can be seen. The Baltic lands have been among the most economically successful regions in all of the Soviet empire. Just as the Soviet Union's colonialist economic policies could not completely devour the industrial strength of the Baltic region, neither can its tanks and Black Berets suppress the Baltic people's desires for freedom.

For the last 50 years the citizens of Latvia, Estonia, and Lithuania have been subject to Soviet control, repression, and terror. From the mass deportations in 1941 up to the unwarranted attacks upon unarmed customs officials in the last few weeks, the peoples of these lands have lived in fear of an occupying force that has been intolerant of their aspirations to live as free men and women. It is our duty, as citizens of the greatest democracy on Earth, to remember these citizens of nations that are not as fortunate as our own. Our Government has never recognized Soviet sovereignty claims over Baltic States; yet, the Soviet Union persistently rejects our calls for Baltic freedom. We must keep in mind the suffering the people of those nations have endured for the sake of freedom and sovereignty. Above all, we must not forget those who have lost their lives or continue to risk their lives in the effort to free the Baltic nations.

It is fitting and proper to commemorate the struggles of the Baltic nations. I applaud President Bush for signing the proclamation that made June 14, 1991, Baltic Freedom Day. All Americans should understand that these nations are being held in the Soviet Union against their will. I share Estonian head of parliament Arnold Rüütel's sentiments that Baltic Freedom Day should be as much "a day of hope" as "a day of mourning," looking forward to the time when Americans will be able to celebrate Baltic Freedom Day with truly independent Lithuanians, Latvians, and Estonians.

FAREWELL ADDRESS OF HARVARD PRESIDENT DEREK BOK, "THE SOCIAL RESPONSIBILITIES OF AMERICAN UNIVERSITIES"

Mr. KENNEDY. Mr. President, on June 6, Derek Bok gave his farewell address as president of Harvard University. He came to office in 1971 in an era of student protests and antiwar demonstrations that were dividing American universities and the rest of the Nation from itself. Now, after 20 years of principled leadership and outstanding achievement in the cause of Harvard and higher education, he is stepping down, at a time when the world of American education and the country itself are very different places.

As a crisis manager and problem solver, President Bok belonged to a new breed of university leaders. A lawyer by training, and a professor and then dean at Harvard Law School, he became an instant and enduring success as president of the university, and his tenure has been widely praised.

Under his leadership, among other notable achievements, the undergraduate college instituted a core curriculum that has become a guide for academic excellence in colleges throughout the country. The John F. Kennedy School of Government, established during his administration, has taken its place on a par with Harvard Law School and Harvard Business School, renowned for its role in public policy research and in training young men and women for Government service.

Appropriately, President Bok chose as the topic of his farewell address the theme "The Social Responsibilities of American Universities." He spoke to an audience of more than 20,000 students, family members, professors, and alumni in Harvard Yard after the university's commencement exercises. His address is a vigorous challenge to all of us to confront the rising tide of poverty, crime, homelessness, and other serious problems. He said:

Despite the gravity of these problems, an eerie indifference hangs over the land. It is the peculiar misfortune of our age that those most fortunately placed in our society seem least exposed to the suffering around them and least inclined to help.

He observed that universities are under widespread attack for increased tuition, for inadequate financial aid to students, for affirmative action, and for attempts to broaden their curriculums beyond conventional studies of Western civilization. But the real attack on universities, he said, should come from an entirely different direction—the abdication of their basic responsibility to help society meet its larger needs.

As he stated, university "research on school reform, poverty, crime and many other social afflictions lags far behind the urgency of these problems for our society." No ivory tower for President Derek Bok.

During his 20 years in office, President Bok touched the lives and inspired the dreams of thousands of young men and women from all parts of the United States and many other lands. He is an outstanding educator, administrator, and philosopher who has presided over an era of renewed excellence in the Nation's oldest and most famous university.

In sum, President Bok's farewell address is an eloquent analysis of the immensely important social mission of the modern university. I believe that it will be of interest to all of us in the Senate who are concerned about these challenges and the proper role of our great universities.

I ask unanimous consent that it may be printed in the RECORD, along with an article on President Bok from the Harvard Alumni Gazette of June 1990.

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

[Address of President Derek Bok]

"THE SOCIAL RESPONSIBILITIES OF AMERICAN UNIVERSITIES"

(Harvard University, June 6, 1991)

It is always a moving experience to look out at all of you, our graduates, who have gathered here from neighboring towns and distant places to offer your respects to this venerable institution. Over the years, I have come to understand how Harvard has touched your lives—by lifting hopes and ambitions, by helping to create lasting friendships, by arousing intellectual curiosity and awakening life-long interests. These gifts are priceless, but you have amply repaid them. Throughout my twenty years of service, your interest in Harvard has never flagged, and I can scarcely find words eloquent enough to express my gratitude.

Over a half century ago, some wit remarked that Harvard evokes a loyalty from its alumni that is comparable only to the fealty sworn by subjects to a sovereign power. Truly, your loyalty is remarkable. But I have never found it to be a blind loyalty—an unquestioning belief in alma mater right or wrong. It is not even as much a loyalty to Harvard as it is a belief in Harvard's ideals of intellectual freedom and high scholarly standards. Time and again throughout my presidency, your faith in what this University could be and should be has pushed me to try harder to fulfill your hopes. Such loyalty is precious. I thank you for it and know that you will give much more of the same to my exceptionally able, dedicated successor.

In this, my last speech to all of you, I would like to share some very personal thoughts about the direction in which I have tried to take the University and the reasons why I chose to do so. This is not a simple task, for Harvard is hardly a simple institution. It is not merely a university but a universe of many separate galaxies and solar systems—a vast collection of stars and planets, some growing hotter and more luminous, others giving off a paler glow, some shining only with reflected light, and a few, like meteors, bursting across the heavens in an incandescent moment of glory.

To find in this great cosmos a single pattern or theme requires a desperate oversimplification. But having no choice, I thought that I would spend these last few minutes pondering a question that has preoccupied me throughout these past two decades. What social purpose can an American university claim to have at the end of the twentieth century? What contribution can we make to society that will justify the benefits we receive and inspire the students who come here to learn?

This is not the only question to ask of Harvard, but it has grown to be particularly important during my presidency. Forty years ago, when I first arrived here as a student, the answer was obvious. America and its universities were united in a common resolve to build a system of scientific research that was preeminent in the world and to expand our colleges to embrace a larger segment of the nation's youth. In less than two decades, we achieved these goals and created the strongest universities of any country on earth.

By the time I took office, this unity of purpose had all but disappeared. Our students were alienated from a society in which they saw their heroes assassinated, their government engaged in a brutal war, their leaders embroiled at the highest level in scandal and deceit. Undergraduates no longer had much interest in careers of public service. Some turned to political protest and cried out loudly for grandiose reforms. Others quietly prepared themselves for lucrative callings: "If you find yourself on the Titanic," one Harvard senior explained, "why not grab a comfortable deck chair and go first class?"

Meanwhile, government officials and the general public had little patience with the violence and intolerance on university campuses. After the demise of the Great Society and the misadventures of the Best and the Brightest, many Americans even lost confidence in advanced knowledge as a key to progress or in experts as guides to help resolve our problems. In this demoralized environment, the social purpose of the University seemed very much in doubt.

As I end my term of office, the campuses are quieter, and the angry tumult of the late 1960s is all but forgotten. Even so, the bonds of understanding between our universities and the nation have not grown stronger. While universities are as dependent as ever on public support, neither educators nor community leaders share a clear, compelling view of what universities can do for the society. Instead of common efforts toward common goals, there is a buzzing confusion of complaints over tuitions, financial aid practices, reading lists, affirmative action, even modern literacy theory. Although these are all legitimate issues, the fact that they dominate the debate about American higher education only shows how muddled we are about why universities truly matter to the society.

This confusion is rather new for Harvard. Those who founded the College had little

doubt about its social mission. Harvard was built to perpetuate a learned ministry and to prepare the magistrates and landed gentry who would watch over the affairs of the Commonwealth. Through the next 300 years, its purposes changed as the campus grew more secular. But Harvard still educated a Protestant aristocracy in the great Western tradition of humane learning to prepare them for leadership in the civil society.

Of course, the Harvard of that era had many faults. There was something too elitist, too smug, too insular about a university that took so many of its applicants from the best private schools and the privileged classes. Looking back even on Eliot's Harvard and Lowell's too, we are uncomfortable at the thought of a campus where women were excluded, where blacks were barely tolerated, where poor students rented cold-water flats while their well-to-do classmates lived in Gold Coast apartments and worried about making the right final clubs.

No one today would choose to go back to the old Harvard. Most of us believe that the curriculum has become much richer, the faculty deeper in talent, the student body more intelligent, more egalitarian, more diverse, more interesting.

Yet the old Harvard had one advantage. There was a tacit understanding of what its social purpose was and where its ultimate significance lay. Those who came—however indolent, however content with their gentlemen's C's—assumed that Harvard was there to prepare them to be leaders of society—to serve it, improve it, and preside over its institutions. In President Eliot's words, "Teachers and students alike are profoundly moved by the desire to serve the democratic community." As late as 1936, at our Tercentenary Celebration, Franklin Roosevelt repeated this theme when he said: "Here are to be trained, not lawyers and doctors merely, not teachers and businessmen merely. . . . Harvard trains men to be citizens in that high Athenian sense which compels a man to live his life unceasingly aware that its civic significance is its most abiding."

Though Harvard may have improved in many respects, it is no longer clear what civic significance still inspires our work and justifies the subsidies, benefits, and protections that society grants us to help us carry on our labors.

Are we simply training an elite with the skills they need to move into the professions and achieve worldly success? No, you will say, we are doing more than that. We have made a reality of the American Dream by turning a hereditary aristocracy into an aristocracy of talent. We have opened doors to able students from opposed minorities, from poor neighborhoods, from rural backwaters. We have become an instrument for achieving America's ideals of social mobility and equal opportunity. And that is no small achievement, grant you. It has taken great effort, and great generosity from alumni like yourselves, to make it possible to admit every deserving student, regardless of family income.

And yet, we have to face some hard truths. Admitting the ablest students in America is a noble practice, but in today's society, children from working class families, urban ghettos, or country villages are too often handicapped by poor schools, broken homes, and troubled neighborhoods to fare well in the stiff competition to enter Harvard College. Despite the thirty million dollars in undergraduate scholarships that we award each year, the fact is that we enroll fewer students from farm communities or blue collar families than we did 75 or even 100 years ago.

We must also ask ourselves whether it is enough to offer a Harvard education to the brightest applicants without asking how their talents will be used. Surely we cannot justify our existence merely by enrolling students lucky enough to possess a high I.Q. and giving them the knowledge and skills they need to succeed in their profession. Nor is such an education sufficient to give meaning and fulfillment to the lives of those who come here to study. A Harvard education must serve a larger social purpose to justify our existence and inspire our students.

But surely, you will answer, I have left out the most important part. Harvard is not merely helping the talented few to succeed. By giving able students the education they need, Harvard and universities like it supply the human capital that helps our businesses to grow, our economy to prosper, our legislatures to rule wisely, our hospitals to minister brilliantly to the sick, our law courts to dispense justice. By virtue of their superior skills and education, our graduates will assume positions of leadership to guide their professions in the service of society. In this way, we do as our forefathers did but on a grander scale with students of more diverse and exceptional abilities.

This rationale may have sufficed through generations when America seemed to be steadily advancing, conquering its problems, drawing closer to the promised land of opportunity, security, and prosperity for all. In those years, universities could assume that the education they offered was a vital ingredient in the progress of the nation. Today, however, we no longer take progress for granted. While freedom and democracy are gaining around the world, bringing hope to many millions and an end to the long Cold War, here in America many of our problems are growing larger, and the goal of prosperity for all seems more elusive than before.

We may have the world's best business schools, but our industries have slipped, one by one, behind their competitors in Germany, Japan, and other industrial nations. We may turn out the world's best trained lawyers, but our courts are choked with litigation, and our poor and middle class can often not afford an attorney. The technical virtuosity of our doctors may be the envy of the world, yet over 30 million Americans lack any kind of medical insurance, even as health costs rise to consume a larger share of the Gross National Product than in any other country on earth.

During my 20 years in office, conditions have actually grown worse for many millions of our citizens. The bottom third of our population has gotten poorer, not richer. The average worker today receives a lower real income than his parents had two decades ago. Our public schools have likewise lost ground, and the performance of their students has gradually sunk toward the bottom in comparison with other industrial nations. Almost 50 years ago, teachers reported that the greatest problems they faced were whispering in class, running in the halls, and chewing gum. Today the list has changed to include such grim entries as bringing guns to school, using drugs, and committing acts of physical violence.

These misfortunes rise to tragic proportions in our poor communities. In the past 20 years, homicide, homelessness, poverty, drug abuse, and chronic unemployment have all grown more severe. The violence in our urban ghettos has now reached the point that young males actually have a lower chance of survival in the course of a year than combat soldiers had at the peak of the Vietnam war. Nationwide, one out of five children lives in poverty; over 100,000 have no homes in which to sleep. One child in eight does not get enough to eat and carries greater risks of being retarded, falling ill, and missing school.

One need not stray very far from Harvard Yard to witness sights I never saw as a student in the 1950s. Each morning as I drive to work, I pass the huddled shapes of bodies sleeping on the grates surrounding Holyoke Center. Each noon when I go to lunch, I see the outstretched hands of ragged figures pleading for quarters and dimes. On winter evenings, when I return home, Harvard undergraduates, not yet twenty years of age, go forth to nearby homeless shelters and perform the grim duty of deciding who can enter to sleep and who must be turned away into the frigid night.

Despite the gravity of these problems, an eerie indifference hangs over the land. It is the peculiar misfortune of our age that those most fortunately placed in our society seem least exposed to the suffering around them and least inclined to help. Instead of a popular outcry to end the urban violence, the poverty, the homelessness, the hunger of children, the loudest clamor we hear from the public today is No New Taxes—and this in a country where the total tax burden is lower than in any industrial country in the world.

Against this rising tide of insensitivity and neglect, is it enough for Harvard to attract the brightest students if we do not excel in making them caring, active, enlightened citizens and civic leaders? In asking this question, I do not mean in any way to suggest that we should press upon our students any particular social policies or economic doctrines. There is no proper place at Harvard for Political Correctness. But neither should we accept the view, so prevalent in the society, that it is politically correct to tolerate our domestic problems and stand by idly when there is so much work to be done to revitalize our nation. At Harvard, surely, we must give our students the breadth of knowledge and the powers of analysis and reflective judgment that will equip them to participate wisely in civic and community affairs. We must work much harder to strengthen our efforts to prepare able people for professions, such as teaching, government service, ministry, and public health, that grapple on a daily basis with the gravest challenges facing our society. And we must do our very best to work with all our students to deepen their concern for those who need help, to build within them a strong sense of ethical responsibility, to help them acknowledge that exceptional talent carries with it exceptional responsibility for the welfare of others. We must teach them, in short, to appreciate the Biblical admonition: "Much has been given and much will be expected."

These efforts, important as they are, do not exhaust our social mission. The causes of the nation's plight go beyond a dearth of humane, responsible citizens and leaders. Even when the desire to help exists, government and community leaders are often stymied by an inability to know what to do about problems as baffling and complicated as poverty, crime, or inadequate schools. Many programs have been tried in an effort to solve these problems; all too often they have failed. Much of our current dissatisfaction with government results from these failures, and many of the failures are the result of ignorance.

Yet the very ignorance that confounds society is a call to action for universities. It

underscores another vital social purpose: to contribute the knowledge that will help society discover how to overcome its most pressing problems.

Educators and scholars have long felt ambivalent about this responsibility. The traditional view has been that great universities should promote discovery and the growth of knowledge, not by trying to solve the world's problems but by encouraging scholars to pursue the truth wherever their curiosity leads them.

That view remains extraordinarily important. We must always do our best to attract the most creative, powerful minds to Harvard and give them the freedom and support they need to make their most profound contributions. The scholars that succeed most grandly are the brightest stars in our firmament. If their achievements do not solve immediate problems, they endure nonetheless as monuments of our civilization to enlarge our understanding of our culture, our past, our environment, and, not least, ourselves.

But contributions of this stature are not the only work of a great university. Much of our research, especially in our professional schools, has a more practical thrust, so much so that universities have become the nation's principal resource for helping our society to comprehend its problems. If America expands its Headstart program, discourages smoking to lower the incidence of cancer and heart disease, uses computers to improve corporate performance, or develops new national assessment tests to chart the progress of its schools, it must rely on research carried out by university investigators. Those who do such work can also claim a respected place in our firmament. As Oscar Handlin has observed, "Our troubled planet can no longer afford the luxury of pursuits confined to an ivory tower. . . . Scholarship has to prove its worth not only on its own terms but by service to the nation and the world."

In the conditions of modern society, then, universities bear two important social responsibilities: one involving education, the other research. While this thought is hardly revolutionary, the truth is that neither of these tasks has yet received the attention it deserves on campuses across the nation. Education for humane citizenship is a stunted enterprise, while preparation for teaching and most of the other helping professions suffers from benign neglect. Meanwhile, research on school reform, poverty, crime and many other social afflictions lags far behind the urgency of these problems for our society. Surely, these shortcomings make a more important subject for debate than most of the issues that have dominated recent discussions about higher education.

The contributions we need to pursue our social mission come from every part of the scholarly universe—from academic disciplines and from professional schools, from the humanities as well as the sciences. Indeed, if any single thread connects many of the initiatives I have taken at Harvard, it is the effort to strengthen our work along these lines. It is our social mission that animates much of the Core Curriculum and the emphasis placed on moral reasoning, ethics, and community service in the College and professional schools. It was this mission that inspired the building of a Kennedy School that could attract able people to government and train them to exercise power wisely. It was this mission that spurred our efforts to strengthen the schools of Education, Public Health, and Divinity—each of them faculties weak in material resources but strong in their orientation toward serving human needs. It was this mission, finally, that led to the creation of active centers of research to work on such pressing human problems as poverty, arms control, Third World development, AIDS, housing, public education, delivery of health care, and soon, I hope, the environment.

In making these efforts, I know full well that no social problem will ever be solved by universities alone. We have no power to implement laws, nor do our scholars have a special talent for devising practical solutions. These are the proper tasks of lawmakers, officials, and community leaders. Still, the crucial fact remains that lawmakers and officials will never solve our problems without the new discoveries, the specialized knowledge, the highly educated people that universities uniquely supply. That is why universities are already so essential to our society. As time goes on, and our problems grow increasingly complex, our data increasingly voluminous, our technical apparatus increasingly elaborate, the role of these institutions can only become more critical.

It is vital that we all understand this role and recognize its significance. Unless society appreciates the contributions of its universities, it will eventually reduce them to the status of another interest group by gradually stripping away the protection and support they need to stay preeminent in the world. Unless universities take their social responsibilities seriously, they will never inspire their students with a purpose large enough to fill their lives with meaning. More important still, unless universities discharge their duties to the society, they will fail to do everything they can to make this "troubled planet" a better, happier place.

Because of its good fortune, Harvard has a special obligation to give generously of its ability and imagination to the society that sustains it. Looking back on these two decades, I am grateful for all that so many of my colleagues have done to carry out this responsibility vigorously and well. Because of these efforts, I can leave you now, secure in the faith that at a critical time in our nation's history, Harvard will do its best to lend its talents to the cause of justice, compassion, and enlightenment in a world in urgent need of these blessings.

[From the Harvard Alumni Gazette, June 1990]

PRESIDENT BOK TO STEP DOWN ON JUNE 30, 1991

After 20 years as president of Harvard University, President Derek Bok has announced that he will step down at the end of the 1991 academic year.

A search committee will be formed shortly to help select a new president.

Looking back over almost two decades in office, Bok said: "It has been an extraordinary privilege to serve so long as president of Harvard. I cannot imagine another job that would have been so stimulating and absorbing. As Harvard plans for the challenges of the 1990s, however, and prepares to launch a major capital campaign, it is time for me to step down and allow a new president to provide fresh energy and continuity of leadership throughout the next decade."

Henry Rosovsky, a member of the Harvard Corporation and the acting dean of the Faculty of Arts and Sciences, said of Bok's retirement: "It is almost impossible for me to think of Harvard without Derek Bok as president. He has cared deeply about improving every aspect of Harvard. He has also been a most thoughtful leader of higher education in America. I think the entire Harvard community will very much miss his leadership, and no one will miss him more than I."

Many educational innovations were initiated at Harvard under Bok's presidency including the establishment of the Core-Curriculum of the College and the New Pathway at the Medical School, along with various other new educational programs and curricula reforms in other faculties. In addition, centers and programs for the improvement of teaching were created in a number of faculties, and large-scale efforts were organized to train graduate student instructors in teaching skills.

Bok is credited with developing the John F. Kennedy School of Government into a major professional school with a full complement of professional and executive programs to prepare men and women for responsible posts in government at all levels.

The status of women changed substantially during the Bok presidency with the adoption of a policy of equal access to the College and an integration of financial aid programs for undergraduates on a gender-blind basis. In 1970, there were 3 female tenured faculty members at Harvard University. By 1971, the number of female tenured faculty rose to 6, and by 1973, the number was 14. The 1990 total for female tenured faculty was 71. In 1971, there were 42 female ladder faculty (Associate and Assistant Professors), and by 1973, that number had risen to 76. By 1990, the number of female ladder faculty totaled 424.

In 1971 there were 23 minority tenured faculty members and 34 minority ladder faculty (Associate and Assistant Professors). By 1973, that number had risen to 44. By 1990, the number of minority ladder faculty had reached 202.

Among nonfaculty employees, in 1971 there were 843 female professional nonfaculty employees. By 1973, there were 1,032 female professional nonfaculty, and by 1990 there were 2,134 female professional employees (Executive/Administrative/Managerial and Professional/Nonfaculty categories). For minority professional nonfaculty employees, in 1971, there were 190. By 1973, there were 220 minority professional nonfaculty employees. In 1990, there were 328 minority professional nonfaculty employees (Executive/Administrative/Managerial and Professional/Nonfaculty categories).

Bok helped establish new programs and research centers to address a series of national and international problems, including poverty, AIDS, international security, energy and the environment, business and government, and professional ethics.

During Bok's 20-year presidency, programs in the arts were strengthened through the arrival of the American Repertory Theatre, the establishment of the Office for the Arts with programs involving more than 3,000 undergraduates, the completion of two new art museums, and the reorganization of the Department of Visual and Environmental Studies.

Bok also began a University-wide initiative in the teaching of ethics. Courses in moral reasoning were made a required component of the undergraduate Core Curriculum and in the teaching of professional schools. Programs in community service were also introduced or enlarged resulting in an increase to 60 percent of undergraduates who perform community service during their college years.

The Extension School, the Summer School, and many other programs of executive and

continuing education were created and enlarged. Together, these programs currently enroll almost 60,000 nondegree students every year.

The athletic plant was expanded and renovated, and a complete complement of women's teams was established during Bok's presidency. Recently, the Harvard athletic program ranked among the 10 best in the country.

Bok completely reorganized the central administration and established a legal office, an office of government and community affairs, and new methods of budgeting and financial planning.

The University completed a $359 million capital campaign, and gifts to the University rose from less than $50 million in 1971–72 to more than $200 million in 1989–90.

A new investment organization, Harvard Management Company, was created to manage the University's endowment. The total value of the endowment rose from $1 billion in 1971 to approximately $5 billion currently.

Bok has written three books on higher education: *Beyond the Ivory Tower* (1982), *Higher Learning* (1986), and *Universities and the Future of America* (1990). He has served as chairman of the American Council on Education and the Association of American Universities and as a member of the board of the National Association of Independent Colleges and Universities. He has been named by several national publications as the most influential leader in American education and has been listed among the most effective university presidents in national surveys.

With regard to his future plans, Bok said, "I haven't yet had time to think about what to do next. I expect to consider my future plans very carefully over the coming year." The Corporation has already asked Bok to remain at Harvard as a University Professor, the highest academic distinction that the University can bestow.

Bok became the 25th President of Harvard on July 1, 1971. Before taking office, Bok was the dean of the Harvard Law School where he was an authority on labor law and antitrust law.

Derek Curtis Bok was born in Bryn Mawr, Pa., on March 22, 1930, the son of Curtis Bok and Margaret (Plummer) Bok. His father was a judge of the Court of Common Pleas in Philadelphia and later an associate justice of the Supreme Court of Pennsylvania.

Bok's grandfather was Edward Bok, who was an immigrant from the Netherlands as a boy and became the first editor of the *Ladies Home Journal*. A great-grandfather was Cyrus H.K. Curtis, founder of the publishing house.

Bok grew up on the West Coast, attending California schools and Stanford University, where he was elected to Phi Beta Kappa and Phi Kappa Sigma, and received the B.A. degree in 1951. At the Harvard Law School, where he received the LL.B. degree *magna cum laude* in 1954, he was an editor of the *Harvard Law Review*.

After law school, he went to Paris on a Fulbright Scholarship. There he met Sissela Ann Myrdal, a student from Sweden, and in 1955 they were married at Louviers, France.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,295th day that Terry Anderson has been held captive in Lebanon.

RESIGNATION OF SUPREME COURT JUSTICE THURGOOD MARSHALL

Mr. DODD. Mr. President, I rise today to pay tribute to Thurgood Marshall, and to thank him for six decades of service to the principles on which this great Nation was founded: that all men are created equal, and that they are endowed by their creator with certain inalienable rights.

Throughout his distinguished career, Justice Marshall has been a brave champion of those rights. He has championed life in his steadfast commitment to individual freedom despite social and political pressure to limit it. As chief counsel of the NAACP, he was a true proponent of liberty: his arguments in the landmark Brown versus Board of Education case freed children all over the Nation from the chains of the separate but equal doctrine that kept from them the multicultural richness of America. And Justice Marshall, the great-grandson of a slave who rose to the highest rank to which an attorney can aspire, is a living example of the fact that in this country, no matter what the odds, happiness pursued with dignity can indeed be achieved.

Justice Marshall has earned his place in history as a judge and a lawyer who gave equal treatment under the law to all citizens, no matter how weak or strong, rich or poor, powerful or disenfranchised. He has applied his formidable legal skill, dedication, and experience to good purpose in the service of our country, and his retirement from the Nation's Highest Court marks the end of an era.

Justice Marshall's resignation provides President Bush with the opportunity to put equality under the law before party politics or personal ideology. These are troubled times for civil rights, and all I can say is that I look to George Bush now for courageous leadership.

I look to the President to nominate a successor to Justice Marshall who will approach every case that comes before the Supreme Court with the same profound respect for the rights of all Americans that Thurgood Marshall has demonstrated through the years.

I would ask the President to think of the children whose life, liberty, and happiness will be affected for decades by the decision that he makes now. And I sincerely hope that the man or woman who follows Justice Marshall to our land's Highest Court will do so with the same mission: to protect the rights of all our citizens.

RECENT ESCALATION OF VIOLENCE IN LITHUANIA

Mr. BRADLEY. Mr. President, I would like to call the attention of the Senate to Wednesday's events in Lithuania. At around 4:30 on June 26, approximately 50 OMON troops armed with automatic rifles and submachine-guns took over the central telephone and telegraph office in Vilnius. The Black Berets held the employees of the building at gunpoint and told them that they were searching for illegal weapons. They occupied the telecommunications center for 2 hours and 20 minutes. They emerged claiming that they had found some unspecified quantity of pistols and explosives in an airshaft. But no one had actually seen the confiscated material.

This latest act of force by Soviet security forces—and let me emphasize that this is only the latest in a long series of actions—represents a significant escalation of Soviet efforts to intimidate the governments and people of the Baltic States.

It was not an isolated action. At the same time, the television tower in Kaunas was taken over and temporarily disabled. Vilnius radio went silent during the raid. While the telecommunications center was occupied, armed men entered the power station in Vilnius and tried to shut off power to Lithuania. Reports indicate that it was coordinated with air support and ground support forces.

Until service was restored around 9, Lithuania was cut off from the world. No faxes, no telephone calls, no telex. For more than 4 hours, the Lithuanian legation here in Washington did not know if we would see a repetition of what had happened in January. For more than 4 hours, the Government could not communicate with its citizens and Lithuanians could not communicate with each other. For more than 4 hours, the OMON forces even cut off communications with the nuclear powerplant in Ignalia, a Chernobyl-type reactor with a poor safety record.

These are the same Black Berets who were responsible for the deaths of 30 Lithunians in January. this is also the same building that they tried to seize in January. I urge my colleagues to examine the documents on these attacks which I received from President Landsbergis and inserted into the RECORD on May 15, 1991, and compare those eyewitness accounts to the report of the Soviet procurator, who found that Lithuanian terrorists were responsible for the deaths.

Who was responsible? Who gave the orders? The Black Berets say they had orders from the local pro-Moscow procurator. The Minister of Interior, Mr. Pugo, has denied responsibility, and of course, Mr. Gorbachev disavows any advance knowledge of the incident.

No knowledge. But neither was there any reprimand. Not even a real condemnation, just a statement laying the blame on unnamed individuals trying to spoil the atmosphere for Gorbachev's upcoming meetings with Western leaders. Mr. Gorbachev has, however, commissioned a study of the attack. The study will be done by the same Mr. Pugo who is in charge of the

forces that carried out the attack. I would not be surprised, Mr. President—in fact I think one could almost predict—that Mr. Pugo will find that the actions of the OMON forces he commands were entirely justified.

Mr. President, whatever lies are reported by the Minister of Interior, the fact is that the leadership in Moscow has created and fostered an atmosphere in which the use of force and violence is used to coerce the decisions made by the Baltic States. Even if Mr. Gorbachev did not explicitly order the attacks, he has clearly sanctioned the continuing intimidation of the Baltics.

What do these actions accomplish? It is Moscow's message to the Baltics, to the republics, and indeed to all democratic forces in the U.S.S.R. that the center is still in control. That they can still cut you off from the world. That they can still cut you off from your population. The seemingly endless string of attacks on customs posts in the Baltics reminds those governments that they are powerless against those who feel no compunction about putting Chairman Mao's dictum that power flows from the barrel of a gun into practice.

We should respond with a message of our own. We should affirm the principle that power must be legitimized by democratic elections—like those which elected the current leaders of the Baltics and the Russian republic. We should affirm the principle that the Baltics are sovereign states who are only part of the Soviet Union by virtue of the Molotov-Ribbentrop pact of 1939. This affirmation must be more than a proforma mouthing of the nonrecognition formula, it should be explicit in all of our dealings with the Soviet Union from their requests for aid and credit guarantees, to the establishment of offices and technical assistance in the Baltics.

I believe that the United States can do more. We could demand that the Soviet forces who are still occupying press and public buildings in Vilnius and Riga, Latvia withdraw from those buildings and return them to their rightful owners.

And when we begin to talk about implementing a trade agreement with the Soviet Union and MFN for the Soviet Union—which seems to be an incomprehensible step in light of this escalating intimidation—the legal rights of the Baltic States must be explicitly endorsed in those agreements.

In sum, Mr. President, the United States should stand strongly behind the forces in the Soviet Union that have legitimacy, but not power. And we should be vigorously condemning the violent actions of the forces that have no legitimacy, but use the power of the Communist political machine. To do any less would be a step away from supporting the Lithuanians who were held at gunpoint and their government.

STEMMING THE TIDE OF VIOLENCE IN YUGOSLAVIA

Mr. PELL. Mr. President, last night, the Senate agreed to a resolution that the minority leader and I introduced with regard to Yugoslavia. Our resolution was an appeal for sanity in Yugoslavia, where violence broke out between the Yugoslav Army and the Slovenian militia. The resolution condemned the use of force in Yugoslavia and called for an end to the hostilities; it urged the central government to agree to calls for negotiations leading to a peaceful settlement of the issues affecting all of Yugoslavia; and it urged the Republic of Serbia to allow the normal constitutional rotation of the Federal Presidency to occur.

Press reports indicate that more than 100 people have been killed or injured in yesterday's fighting. Despite its lack of constitutional authority, the Yugoslav Army deployed troops and tanks along the Slovenian borders, seized border posts, and mobilized troops and tanks in Croatia. This action, ostensibly, was in response to the June 25 declarations of independence by Croatia and Slovenia.

In using force to respond to the independence declarations, the Army has ignored completely the fact that Slovenia and Croatia have expressed their desire for a negotiated settlement on shaping a new Yugoslav union. I hope that Slovenia and Croatia will continue to seek a dialog with the other republics, and that the central government and the other republics will respond positively and immediately to those requests.

Mr. President, I would also note that this week's independence declarations did not occur in a vacuum. In my view, too little attention has been given to Serbia's destructive contribution to the current crisis. In many ways, Serbia's actions, including its obstruction of the constitutional rotation of the Federal Presidency and its blatant human rights abuses against the Albanians of Kosovo, have encouraged the Croatians and Slovenians to take steps to disassociate themselves from Serbia and the Yugoslav federation. I would hope that the Republic of Serbia would do its part to end the current crisis by, at the very least, ending its obstruction of the Presidential rotation.

This morning, the news out of Yugoslavia has been a bit more positive than it was yesterday. Although army troops remain poised at the Slovenian border, press reports indicate that the Federal Army has declared a cease-fire in that republic. I sincerely hope that the army will honor its cease-fire pledge, and that the next step—that of peaceful dialog—will be taken. We have also received word this morning of another welcome development in this regard. Namely, the European Community has announced that it is sending a delegation to Yugoslavia to seek a negotiated settlement to the current crisis. I sincerely hope that all parties in Yugoslavia will respond positively to EC mediation efforts.

Finally, Mr. President, I would note that international pressure has been cited as contributing to today's cease-fire announcement. I am pleased that the Senate has joined with the U.S. administration and other governments throughout the world in declaring unequivocally and firmly its opposition to the use of force to solve Yugoslavia's differences. By passing Senate Resolution 147 last night, the Senate has taken one small but significant step to stem the tide of violence in Yugoslavia. I hope that Yugoslavia will continue to hear us.

TRAGEDY IN YUGOSLAVIA

Mr. DECONCINI. Mr. President, this week we are witnessing a tragedy of enermous proportions in Yugoslavia. Following declarations by the republics of Slovenia and Croatia proclaiming that they were, in effect, seceding from the country, Yugoslav military units moved in to ensure that this would not happen. The result, among other things, is the absolutely unnecessary loss of life, the death of Yugoslavs at the hands of fellow Yugoslavs. The unfortunate news today is that the conflict seems to be escalating.

Yesterday, as Cochairman of the Helsinki Commission, I joined with Representative STENY HOYER, the Commission's Chairman, in condemning the use of force and violence in Yugoslavia, such as the deployment of the Federal armed forces in Slovenia. We opposed the use of force in Yugoslavia as a method by which to solve that country's many problems, including the use of force to maintain the federation.

The CSCE, or Helsinki process, has been viewed as a forum where the United States, along with Canada and Europe, can best seek to bring peace and dialog back to Yugoslavia. Indeed, the crisis in Yugoslavia has increasingly been on the agenda of recent CSCE meetings. Now, several West European countries have called for using, for the first time, a newly developed emergency mechanism to convene a meeting to focus exclusively on the conflict in Yugoslavia. It is, in my view, not only appropriate but critical that the United States give its immediate endorsement to this proposal, and that the meeting be convened quickly.

Bringing Yugoslavia back to peace must be our first priority. Making Yugoslavia fully democratic must be an immediate second if further outbreaks of violent clashes are to be avoided in the future.

Whether Yugoslavia will remain a federation, confederation, association of sovereign states or fully independent countries is, of course, for the peoples of Yugoslavia to decide for themselves. One thing, however, must be clarified. The steps Slovenia and Croatia have taken at times may not have been the ones preferred by the international community, but nobody—I repeat, nobody—has done more to undermine the preservation of a united, Federal Yugoslavia than those who have sought to maintain it through undemocratic means. These officials reside not in Ljubljana nor in Zagreb, but in Belgrade. They have given the Slovenes, the Croats, and increasingly the Bosnians and Macedonians all of the reasons they need for wanting to go their own way. Choosing republic independence has therefore, over time, become to these people synonomous with choosing individual freedom.

Demonstrations by opposition groups in Kosovo, and in Belgrade this year, indicate that all Yugoslavs, in fact, want to live peacefully and in freedom. If respect for human rights and fundamental freedoms, along with other aspects of democratic government, does not become universal in Yugoslavia, no dialog will produce mutual agreement among all parties in Yugoslavia on the fate of that country, and conflict and violence can be expected both to continue and spread. I truly hope that the leaders of Yugoslavia choose the democratic course before it is too late.

CRISIS IN YUGOSLAVIA

Mr. D'AMATO. Mr. President, I rise today to urge the Federal Government of the Republic of Yugoslavia to cease the use of force in their effort to keep that country together.

While we wish to see a united Yugoslavia, a union can never be achieved through force. Instead, it must form with the consent of all the citizens of Yugoslavia.

It is clear to me that the Federal Government of Yugoslavia has chosen to use force to solve a problem that it has been avoiding for many years. They have failed to control the violent, oppressive leadership of Serbia, which has engaged in a pattern of gross human rights violations against Albanians in Kosovo. As a result, the other minorities, fearful of Serbian domination, have chosen to rebel.

The fault for this independence movement lies squarely on the shoulders of the Federal leadership. Had the Federal Government of Yugoslavia acted to protect the rights of one minority, other minorities would be more willing to remain part of that country.

Slovenia and Croatia have instead declared their independence. They no longer feel that they can coexist with the brutal Communist leadership of Serbia.

Unfortunately, the United States, in its quest to preserve Yugoslavia, has adopted a policy which rewards the Yugoslav Federal Government for its failure to protect human rights. I'm afraid this policy, which has only motivated the Serbian leadership toward further violence, will precipitate the dissolution of Yugoslavia.

It is time the United States firmly stood up to the terroristic rule of Slobodan Milosevic. It is obvious that the Federal Government in Yugoslavia has chosen to use force to kill the oppressed, instead of controlling the oppressors. We must firmly ally ourselves with the forces of democracy and human rights. Unfortunately, we have yet to do so in unequivocal terms.

It is not too late for the United States to firmly state that it supports the forces of freedom and democracy in Yugoslavia. Such a message, coupled with strong pressure on the central government to confront the Serbian leadership, could give Slovenes, Croats, and other minorities in Yugoslavia a reason to remain in the union.

As long as the Serbians continue to oppress the Albanian minority in Kosovo, every other constituent member of the Yugoslavian federation must look with horror at the prospect of a Yugoslavia dominated by Serbians and consequently yearn for its dissollution.

SENATE RESOLUTION 147

Mr. NICKLES. Mr. President, last night the Senate adopted a resolution, Senate Resolution 147, sponsored by Senator DOLE, Senator PELL, Senator PRESSLER, Senator BYRD, Senator HELMS, myself, and Senator RIEGLE to express the Senate's opposition to the use of force to resolve the political differences in Yugoslavia. As all my colleagues are well aware, the Yugoslavian Central Government has been using force now to suppress the Republic of Slovenia and quite possibly the Republic of Croatia because of their moves toward democracy and independence.

This resolution condemns the use of that force. That force is unnecessary. It is not called for. I call it to the attention of my colleagues because we agreed to it last night at 1, and I am afraid many of my colleagues were not aware of it. But that resolution expresses our outrage at the use of force to suppress democracies.

The United States should not, and I believe will not, turn its back on the democratic forces in Yugoslavia. The problem is not that democracy is breaking out in Croatia and Slovenia. The problem is the totalitarian Communist forces in Serbia have tried to extend their domination, their totalitarian regime now through the use of the Army. That is very regrettable, and it will not be without consequence, as far as at least this Senator is concerned.

There is an outstanding article in the Wall Street Journal, "Yugoslavia on the Brink." I ask unanimous consent it be printed in the RECORD at this point.

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

YUGOSLAVIA ON THE BRINK

If all the king's horses and all the king's men couldn't piece Humpty Dumpty together, then keeping the titular nation of Yugoslavia together may have reached the point of futility. Certainly it has reached a danger point, as evidenced by the fighting that raged across Slovenia yesterday, leaving a reported 100 people dead or injured. The West might be wise to consider seriously the reality that two nationalities have overwhelmingly voiced their desire to break free from Belgrade and integrate into Western Europe.

The republics of Slovenia and Croatia declared independence from communist-dominated Serbia despite explicit warnings that the U.S., France and Britain, among others, would not recognize their secessions. (Austria and Germany are less adamant.) The West had supported Yugoslavia's federal Prime Minister Ante Markovic, who has seemed to offer the best hope of keeping the republics stitched together.

For a time it seemed that a real breakup could be avoided. But centuries of historic division along cultural, political and religious lines made Mr. Markovic's eventual failure predictable. As the two maps here show, the conflicting regions are divided much as they were from 1719 until 1878, when Croatia and Slovenia were aligned with the West under the Hapsburgs, while the Ottomans imposed their brand of governance on the Serbs.

Today Serbian communists, while professing to support a strong federal government, have worked to thwart Mr. Markovic's economic and political reforms. They exploited nationalism to divert attention from social failures. The Serbian president, Slobodan Milosevic, employed Serbian dominance of the army officer corps to threaten other republics.

Slovenia and Croatia, the two wealthiest republics with strong historic ties to Central and Western Europe, meanwhile drafted plans for reforms. The two stopped sending funds to the federal government and held referendums in which large majorities of the people voted for independence. When Croatia's 600,000-strong Serbian minority (out of a total residency of 4.5 million) cried foul, the path for collision was set.

Moreover the West's efforts to prop up the progressive-minded Mr. Markovic appear only to have encouraged hard-liner Milosevic. The Serbian president (whose popularity with Serbs has slipped badly) seems to see Western opposition to the breakup as a mandate for military intervention. Thus Yugoslav tanks have taken up key positions in the breakaway states, generating a tense war of nerves.

For the U.S. and Europe, this situation calls for a fresh, more realistic look at policy. It should be asked whether there is more likelihood of the Slovenes and Croats successfully developing as democratic states outside Yugoslavia than coexisting peacefully within it. By insisting on preserving a federated Yugoslavia the West could encourage further intimidation by Serbian Presi-

dent Milosevic and lose all chance for a peaceful transition.

The breakaway republics are not demanding that an iron divide be erected between themselves and the rest of Yugoslavia. They only are rejecting the right of the federal government and Serbia to dominate their policies. The mere fact of their small size need hardly be an issue. If it were, Switzerland would not be Europe's richest country.

The U.S. and Europe, by aligning themselves with what is in effect the Milosevic camp, fuel the tensions. If an accommodation can be found to patch Yugoslavia together, so much the better. But it will have to be a very different Yugoslavia from this one, where the uncompromising position of a single man, Slobodan Milosevic, has brought about a dangerous crisis.

Mr. NICKLES. Mr. President, for my colleagues' information I ask unanimous consent to include this resolution again, Senate Resolution 147, for their information, and also for the public's information, again expressing our outrage about the use of force against the democracies in Slovenia and Croatia.

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

S. RES. 147

Whereas, since May 15, 1991, the government of the Republic of Serbia has blocked the constitutional rotation of the federal presidency of Yugoslavia, effectively leaving Yugoslavia without a President and commander-in-chief of the Yugoslav Army;

Whereas, on June 25, 1991, the democratic republics of Croatia and Slovenia declared their independence;

Whereas, in conjunction with these declarations of independence, Croatia and Slovenia have indicated their willingness to continue dialogue and negotiations with the other republics of Yugoslavia on the future of Yugoslavia;

Whereas, on June 26, 1991, in response to these declarations, the Yugoslav central government, despite its lack of constitutional authority, ordered the Yugoslav Army to deploy troops and tanks along the Slovenian borders, to seize border posts, and to mobilize Yugoslav Army troops and tanks in Croatia;

Whereas, the Yugoslav Army is presently carrying out those instructions;

Whereas, there are reports of growing numbers of deaths of civilians, militiamen, policemen and soldiers as a result of fighting between Yugoslav Army forces and militia forces of the republics of Slovenia and Croatia;

Whereas, in its June 26 statement on Yugoslavia, the United States Department of State asserted that, "The United States strongly opposes the use or threat of force to resolve political differences in Yugoslavia": Now, therefore, be it

Resolved, That—

(a) the Senate condemns the use of force to resolve political differences within Yugoslavia;

(b) the Senate calls on the Yugoslav central government to cease using the Yugoslav Army to address the current crisis, and instead urges the central government to respond positively and immediately to domestic and international calls for negotiations leading to a peaceful settlement.

(c) the Senate calls on the government of the Republic of Serbia to stop blocking the rotation of the Yugoslav Presidency.

TRIBUTE TO THE LATE CURRIE SPIVEY OF SOUTH CAROLINA

Mr. THURMOND. Mr. President, I rise today to pay tribute to my good friend Currie Spivey of South Carolina, who was tragically killed in a plane crash on June 21. Mr. Spivey was a man of integrity and dedication and his death is a great loss for our State.

Currie Spivey was an outstanding individual in every way. He was a keen businessman and a committed community leader. He was a loyal, trusted friend, and a fine husband and father. He was one of the most public-spirited men I have known, and he always went out of his way to help others.

At the time of his death, Currie Spivey was chairman of the South Carolina State Development Board. Although he had only held this post since January, Mr. Spivey had already initiated positive change in the board, and I have no doubt he would have accomplished great things had he continued his work. While the cause of his plane crash remains unknown at this time, the effect is clear: South Carolina has lost a good friend.

I would like to take this opportunity to offer my condolences to Mr. Spivey's wife, Kay, and children, James Spivey and Beth Paschal and the rest of his fine family.

Mr. President, I ask unanimous consent that an editorial from the State newspaper detailing some of Mr. Spivey's accomplishments on behalf of South Carolina be included in the RECORD immediately following my remarks.

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

[From the State, June 26, 1991]

CURRIE SPIVEY'S LEGACY

The death of Currie Spivey, killed in an airplane crash near Columbia, removes from our midst a business luminary of vision and acumen, leadership qualities he turned to immediate, progressive effect when he took over as chairman of the state Development Board earlier this year.

Upon assuming control of the industry-hunting agency, Mr. Spivey brought in accounting executives of four large South Carolina firms to help the board's eight division heads set priorities.

A cost-cutting agenda was put into place, including structural reorganization and the concept of zero-based budgeting. Zero-based budgeting means agencies' future budgets will be built from scratch.

Buck Mickel, then executive vice president of Daniel Construction Co. in Greenville, hired Mr. Spivey in 1963. Mr. Spivey rose to become vice president of sales for Daniel in 1970 and its president in 1977.

"It was obvious he had all the talents," Mr. Mickel said. "He was good-looking, well-balanced, easy to get along with, easy to meet people, very competent, very aggressive and had visions of what he wanted to do. He wanted to be a success; he wanted to build up the South."

The sights were set but, tragically, it will remain to others to carry forward on his high aspirations for a robust, economically viable South Carolina. Accountability and other reforms he instituted at the Development Board are not only his legacy but a challenge as well to other departments of the state bureaucracy to follow suit.

STATEMENT ON THE NOMINATION OF HARVEY E. SCHLESINGER

Mr. GRAHAM. Mr. President, I am pleased that in the wee hours of the morning, the Senate confirmed the nomination of Harvey E. Schlesinger for the U.S. District Court for the Middle District of Florida.

Harvey Schlesinger received his law degree from the University of Richmond in 1965.

Following graduation he served in our Nation's Armed Forces as an assistant counsel to the staff judge advocate, Fort McPherson, GA.

In 1970, after discharge from the Army, he became assistant U.S. attorney for the middle district of Florida.

Selected in 1975, Judge Schlesinger continues to serve as the U.S. magistrate judge for the middle district of Florida.

During his long legal career, Judge Schlesinger has gained substantial experience adjudicating a broad range of legal problems.

As an adjunct professor for the University of North Florida, he dedicates his time to sharing his knowledge with others.

Judge Schlesinger has also devoted significant time and energy to many civil organizations, including helping the mentally retarded and the Boy Scouts of America.

I am very proud of Judge Schlesinger's accomplishments. His distinguished background, coupled with his obvious legal skills, qualify him for selection.

I am pleased that the Senate has acted expeditiously in confirming him to the Federal bench in the middle district of Florida.

STATEMENT ON THE NOMINATION OF RALPH W. NIMMONS

Mr. GRAHAM. Mr. President, I am pleased that in the wee hours of the morning, the Senate confirmed the nomination of Ralph W. Nimmons for the U.S. District Court for the Middle District of Florida.

A graduate of the University of Florida College of Law, Judge Nimmons has had a long and illustrious legal career.

Beginning with the public defender's office in 1965, Judge Nimmons has served with distinction in both the public and private sectors.

As Governor, I had the pleasure of appointing Judge Nimmons to the Florida First District Court of Appeals, in 1983.

Prior to his selection to the Appellate bench, he served as assistant State attorney in the Fourth Florida Circuit,

as assistant general counsel for the city of Jacksonville, and as Fourth Judicial Circuit Court judge.

He has participated in many organizations and activities related to his work, usually shouldering the leadership positions.

As a founding member and former treasurer, Judge Nimmons was very active in the development of the Jacksonville Wolfson Children's Hospital.

Judge Nimmons has exemplified the characteristics necessary of the Federal judiciary.

I am pleased that the Senate has acted expeditiously in confirming him as to the Federal bench in the middle district of Florida.

FAILED PROMISE OF AIRLINE DEREGULATION

Mr. McCAIN. Mr. President, yesterday America West joined Continental, Pan Am, and Midway Airlines in declaring the need for the protection of chapter 11 of the bankruptcy laws to permit reorganization. Along with TWA, which has threatened to invoke chapter 11, 5 out of the 12 largest U.S. airlines, carrying one quarter of all traffic, are operating under the protection of chapter 11.

How has this happened? The immediate causes are obvious. The triple whammy of the gulf war, higher fuel prices, and the recession have created losses of $4 billion in 1990 for the industry as a whole and an additional $2 billion in losses for the first quarter of this year. The losses have been particularly devastating for younger, expanding carriers like America West.

While it is clear that all airlines are currently under financial stress, it is also apparent that there is an underlying trend toward more concentration and consolidation in the industry. As recently as 1984, the eight largest airlines carried only 74 percent of all passengers. Through mergers and liquidations, concentration in the industry has reached a point where, today, the top eight airlines carry 92 percent of the traffic. With a quarter of the industry under the protection of chapter 11, I fear that we will see even more concentration.

Was this consolidation and concentration in the airline industry inevitable? Secretary Skinner, who has suggested that as few as three airlines will survive, seems to believe so.

I reject this premise. The promise of airline deregulation was not an oligopoly of just three or four airlines dominating air traffic, airports, and air fares. The promise of airline deregulation was clearly stated in the declaration of purpose in the 1978 act:

> The prevention of unfair, deceptive, predatory, or anticompetitive practices in air transportation, and the avoidance of unreasonable industry concentration, excessive market domination, and monopoly power.

Airline deregulation was supposed to mean entrepreneurs would have the opportunity to start new airlines and succeed through providing consumers with better service at lower prices. The announcement of America West's decision to invoke chapter 11 sends a signal that the promise of deregulation has been broken.

The frustration of deregulation's intent was not inevitable. Rather, it is the direct result of either indifference or outright hostility on the part of the Department of Transportation toward increased airline competition and new entrants. An examination of the Department's actions and inaction is instructive.

During the 1980's, the Department of Transportation played Will Rogers to the airline industry. It never met a merger it would not approve. Texas International, People's Express, New York Air, Frontier, Western, North Central, Southern, Hughes Airwest, National, Ozark, Empire, and Piedmont Airlines all disappeared, increasing concentration.

Numerous studies by the General Accounting Office [GAO] and the Department of Transportation [DOT] have documented that computer reservation systems or CRS's are a significant barrier to competition. The DOT's own proposed rulemaking on CRS's, released this spring, admits that CRS's are anticompetitive. Yet that same rulemaking refuses to address the worst aspect of CRS's: excessive booking fees. As a result, a few rich airlines will continue to squeeze unfair profits out of their competitors.

The GAO has also documented the importance for new entrants of access to the four slot-controlled airports: Washington National, Chicago O'Hare, and New York Kennedy and LaGuardia. Without access to these airports, smaller carriers are unable to build a national route system to attract the more profitable business travelers. To date, the DOT has not fixed this barrier to competition and has failed to issue a required rulemaking on providing new entrants access to these four airports.

Finally, DOT has allowed valuable international aviation routes to be sold to the highest bidder, regardless of the sale's effect on the viability of the airlines involved or airline competition in general. This is especially galling considering that the routes were originally awarded free to an airline only after a long comprehensive process to select the carrier which would provide the best service and the most competition.

Mr. President, it is clear that if the DOT is unwilling to preserve the benefits of competition that were promised through airline deregulation, this Congress will need to provide additional direction. I look forward to working with my colleagues on the Commerce Committee to produce legislation to promote competition.

America West was the last of the postderegulation carriers to avoid reorganization under chapter 11. It has now asked the Bankruptcy Court for protection so that it may restructure its debts. Like Continental Airlines, which invoked chapter 11 over half a year ago, I believe that America West will be able to use chapter 11 to strengthen the carrier and survive a very difficult period for all airlines.

The survival of America West is important for Arizona. America West is the largest private employer in the State, with nearly 10,000 employees in Arizona. In addition, America West provides the State with world-class air service and connections, significantly contributing to the business environment in Arizona.

Finally, Mr. President, the survival of America West is important to anyone who flies on an airline. As a product of deregulation, America West shows what free and open competition will bring in lower fares and improved service. If the barriers to competition that hold back innovative carriers, such as America West, are not struck down, the entire traveling public will pay the price.

HONORING LT. GEN. WILLIAM G. PAGONIS

Mr. SPECTER. Mr. President, today I would like to honor an American war hero as well as a model citizen, Lt. Gen. William G. Pagonis of the 22d Support Command, U.S. Army.

Gus Pagonis was one of the leaders responsible for making Operation Desert Shield/Desert Storm an overwhelming success. With little time and on short notice, the lieutenant general and a small staff put into effect a plan that involved the receipt and the forward movement of critical supplies into the theater of operation.

Operation Desert Shield was the largest, fastest, farthest, and most successful military deployment ever recorded in history. In less than 5 months, over 300,000 Army troops and their equipment were deployed from the United States and Germany to Saudi Arabia. The magnitude of the logistical requirement was compounded by the need to develop a complete operational infrastructure in theater. The 22d Support Command had to simultaneously receive and support incoming combat elements while building the requisite infrastructure. The successful receipt, movement, and sustainment of two full Army Corps plus echelon above corps [EAC] units, with hostilities imminent, was a feat unmatched in military history.

Mr. President, I believe the tremendous victory in Operation Desert Storm was a direct consequence of this highly successful logistical effort. Yet, the work of the 22d Support Command did not cease after hostilities ended.

The support command continued to sustain all Army forces in Iraq and Kuwait while simultaneously planning and executing the massive redeployment of elements of those forces back to the continental United States.

The success of the 22d Support Command in Operation Desert Shield and Desert Storm should be attributed to superb leadership, initiative at all levels, and above all, the exceptionally well-trained and motivated soldiers of the command.

Just as impressive as General Pagonis' recent achievements within the armed services are his efforts to raise and support his fine family. He and his wife, Cheryl, have two children who have decided to follow in his footsteps by serving the United States of America. Gus is a captain in the U.S. Army and is presently serving in Saudi Arabia. General Pagonis' other son, Robert, recently joined the ranks of the U.S. Army.

Mr. Speaker, I ask my colleagues to join me in saluting a fine man and an outstanding soldier, Lt. Gen. William G. Pagonis, for serving his nation with distinction and honor and for being an exemplary figure for all Americans.

THE 27TH ANNUAL ALL-AMERICAN COLLEGIATE GOLF FOUNDATION EVENT

Mr. PRESSLER. Mr. President, it recently was my great privilege to participate in the 27th Annual All-American Collegiate Golf Foundation event. I want to pay tribute to the All-American Collegiate Golf Hall of Fame inductees and the All-American team who gave so generously of their time. Also, I especially would like to recognize the foundation's efforts to expand minority participation in collegiate golf.

On Tuesday of this week, a special ceremony was held at the city hall of New York which put forth the goals of the foundation's minority golf program. This program is making considerable progress in providing opportunities for minorities to become involved in collegiate golf.

Mr. President, I was especially impressed by the efforts made by collegiate golfers. Many people are unaware of the amount of time and effort collegiate golfers must invest in this sport. When these young men and women participate in a tournament, they usually play one practice round, which is 18 holes, before the actual tournament begins.

After the 18-hole practice round, the tournaments usually consist of 54 holes. This means that it usually requires a minimum of 3 days, plus travel time, for these golfers to participate in each tournament. Moreover, most collegiate golfers play approximately 10 tournaments per year.

Considering this time commitment and the corresponding financial obligations necessary to participate in collegiate golf, it is especially difficult for minorities to become involved in collegiate golf programs. They need financial support, and the Collegiate Golf Foundation's minority program is a big step in the right direction.

Mr. President, I also would like to pay tribute to the organizers of this program: William Fugazy, general chairman; Allen Paulson, man of the year in business; Madeleine Paulson, woman of the year; Vincent Sombrotto, man of the year in labor; and to the many others who have participated in this program. I also would like to pay special tribute to Rosemarie Taglione, who does an outstanding job as the scholarship administrator of the foundation.

Mr. President, I ask unanimous consent that a message published in the event's program from foundation chairman William Fugazy be printed in the RECORD.

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

MESSAGE FROM THE GENERAL CHAIRMAN

Tonight marks the 27th Anniversary of the All-American Collegiate Golf Foundation Awards Dinner. What began as an ambitious dream in 1964 by Arnold Palmer and myself, has grown into a phenomenal success story.

Over the last two decades, the popularity of this great lifetime sport has experienced tremendous growth. During this time, we have watched an illustrious parade of golfers develop from emerging hopefuls into legendary superstars.

As a result of the growing interest in the sport and the generous support toward the Foundation, our extensive scholarship program has expanded beyond all expectations. Although the highlight of the evening is to honor the top collegiate golfers and other prominent figures, the main focus is to provide funding for academically deserving students through our scholarship program. In addition to the hundreds of young people who have received scholarships over the years, the Foundation also contributes to youth oriented charities, hospitals, relief services and medical centers.

Plans are now under way for the launching of the All-American Summer Golf Clinic to introduce and encourage minority youth's participation in golf.

The success of the Foundation would not be possible without the support of people such as those we are honoring tonight: Allen & Madeleine Paulson, Vincent R. Sombrotto, and our Hall of Famers: Patty Berg and Dave Stockton.

Together with Tournament Co-Chairman, Peter Bonanni, and Executive Committee Chairman Tom Clark, I want to thank all of you who have been so supportive and dedicated to the All-American Collegiate Golf Foundation. Your love and generosity toward the Foundation will insure our continued success today and in the future.

With Warmest Regards,

WILLIAM DENIS FUGAZY.

CHINA'S MISRULE IN TIBET

Mr. PELL. Mr. President, as the Congress examines MFN trading status for the People's Republic of China, we are faced with many issues and many experts. I would like to draw the attention of my colleagues to the issue of China's misrule of Tibet and to the views of Mr. Lodi Gyari, president of the International Campaign for Tibet and special envoy of the Dalai Lama.

I have been, for many years, a friend of the Dalai Lama. He is a remarkable man—an advocate for peace in confrontation against an often violent regime. I have also been, for too long a time without resolution, a supporter of Tibet in its struggle for freedom and democracy.

The Chinese have been persistent in their disinformation campaign regarding the situation in Tibet as well as China's historic claims to Tibet, the cruelties of feudal rule under the Dalai Lamas, and the "peaceful liberation" of Tibet by the Red army.

On May 25, China declared a day of celebration in Lhasa and unveiled a monument, as high as the United States Capitol dome, to commemorate the 40th anniversary of their rule in Tibet. What transpired in Lhasa that day was not the cheerful massing of the Tibetan populace chanting pro-motherland slogans, but rather an around the clock curfew and a pervasive military buildup intended to intimidate pro-independence demonstrations. And because Western visitors already in Lhasa were restricted to their hotels, the foreign press banned, and invited Western dignitaries boycotted this so-called celebration, reports on what happened on May 25 are limited to the smuggled-out accounts of a few daring Tibetans and the disinformation of the Chinese press.

I am gravely concerned about the situation in Tibet. And as long as the Chinese pursue a policy of deceit and oppressive rule in Tibet, and are unwilling to negotiate an arrangement with the Tibetan government-in-exile that would save that nation from extinction, I find it difficult to support the unconditional extension of nondiscriminatory trade relations with China.

Mr. President, I urge my colleagues to read and consider Mr. Lodi Gyari's article "Behind the Chinese Curtain" that appeared in the June 15 Providence Journal. Mr. Gyari is not a China scholar or think-tank sinologist. Rather, he was an eyewitness to China's invasion and occupation of Tibet and a survivor of the 1959 flight of some 80,000 Tibetans to refuge in India. His two young brothers died in his arms in the snowy passes of the Himalayas. He spent his teenage years aiding the Dalai Lama in the resettlement of his fellow exiles, and has served as a cabinet member of the Tibetan government-in-exile. He is the kind of expert to whom we should listen during these days of deliberation, and I ask unanimous consent that Mr. Gyari's article be printed at this point in the RECORD.

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

BEHIND THE CHINESE CURTAIN

(By Lodi G. Gyari)

China is often its own worst enemy. It spent months planning lavish celebrations in Lhasa to mark the 40th anniversary of its rule of Tibet, but the ceremonies only antagonized and humiliated an already bitter Tibetan population. Western countries boycotted the event. The celebration may be a blessing in disguise, for the world is now more focused on the deplorable situation in Tibet and is laboring to determine the best method of assisting Tibet in its struggle for freedom and democracy.

To prepare for the anniversary, Beijing imposed a 22-hour-a-day curfew to ward off demonstrations, and banned the foreign press. China drastically increased its military presence and undertook strict security measures to protect top Communist Party officials coming from Beijing.

That China would highlight its misrule of Tibet as its most-favored-nation trading status comes up for review has baffled seasoned Tibet and China watchers.

Are they really so brazen as to celebrate what can only be classified as wanton destruction of Tibetan civilization? Or are they just reaffirming their military might and their dogmatic resolve as if their repressive rule is the only future for Tibet?

Beijing's hard-liners are not about to get out of the business of repressing the Chinese or the Tibetan people. So far the United States has all but abdicated its significant and unique potential to help China democratize and, at a bare minimum, to help Tibet maintain its separate identity.

It is one of today's greatest ironies that many of Beijing's leaders were the ones who imported and imposed a Western ideology on their country, and now rely on the West for their survival. They took Marxism down an extreme and brutal path at home, exported it to Tibet, and virtually annihilated an ancient civilization. They are being propped up by the foreign exchange flow into China, which they use in part to subsidize the military occupation of Tibet.

Beijing's propaganda about the celebrations reached an unprecedented volume and concentrated on bold claims of rapid economic development of the country. But when the Chinese boast of building thousands of miles of roads, Tibetans see them used principally for military purposes and to extract natural resources. When they record the number of schools built, Tibetans watch their children learning Chinese language and ideology. When they tout the number of hydroelectric stations built, Tibetans see apartments of Chinese immigrants brightly lit, and Tibetan homes dark.

These are not easy issues. Tibetans may be receiving some benefits from Chinese colonialism, but the question remains—at what cost? Mao Zedong said "power comes from the barrel of a gun," and the Chinese seem intent on continually proving that, but as in Poland during the 1980s, repression in Tibet only seems to create more martyrs, strengthen Tibetan resistance and bring international scrutiny.

It is time for the West to pressure China to change fundamentally its policy in Tibet. Our main goal is the same as every other oppressed people: Survival. We first need to stop Beijing's economic inducements for Chinese to move to Tibet. Jobs, housing, medical care and education are often provided to Tibetans, if at all, only after the Chinese settlers have been taken care of. We must find ways to hold Beijing accountable for blatant human rights abuses—the beating and shooting of demonstrators, arbitrary arrests, imprisonment and torture. We further need the help of the West to end the environmental exploitation of our lands.

The West has a crucial role to play in helping the people of China and Tibet regain their humanity. Denying or at least strictly conditioning MFN will weaken the hard-liners and give much needed hope to those fighting for freedom and democracy.

WISCONSIN'S FRIENDS OF THE ENVIRONMENT

Mr. KASTEN. Mr. President, I rise today to draw the attention of my colleagues to the outstanding environmental leadership of 10 Wisconsin companies.

The companies were honored last Tuesday, June 25, as winners of the 1991 Wisconsin Business Friend of the Environment Awards sponsored by the Wisconsin Manufacturers and Commerce Association of Businesses. Here are the winners and some of their achievements:

GE Medical Systems of Waukesha replaced the plastic foam in its packaging with recycled cardboard scraps.

Green Bay Packaging Inc. of Green Bay converted its pulp-making facility to a 100 percent recycled fiber mill.

Hayes Manufacturing Group of Neenah recycles waste paper cores—keeping some 2,000 tons of waste paperboard out of landfills this year.

John Deere Horicon Works Inc. of Horicon has started recycling packaging material.

Menasha Corp. of Hartford has cut its use of solvents and waste generation by 80 percent.

Parker Pen USA Ltd. of Janesville cut its use of Freon by 67 percent last year.

Presto Products Co. of Appleton has created a mobile recycling service—called the Poly Trolley—that grinds plastic for reuse in plastic products.

Vulcan Chemicals of Port Edwards cut the amount of mercuric sulfide waste it generates by 32 percent.

Wisconsin Electric Power Co. of Milwaukee reused 47 percent of its coal ash last year.

Wisconsin Power & Light Co. of Madison took in 115,000 waste rubber tires last year—and used them to generate over 3 million kilowatt hours of electricity.

These 10 companies deserve praise for their achievements. They point out ways in which we can make society more environmentally friendly—ensuring a clean and safe environment for future generations.

RECENT VIOLENCE IN NICARAGUA: A POTENTIAL THREAT TO DEMOCRACY

Mr. PELL. Mr. President, increasing violence on the part of Sandinista militants as a way to dissuade the Chamorro government and the National Assembly from overturning previous legislation on property rights is posing a major threat to democracy in Nicaragua. It is most disturbing to read about bomb attacks on the homes and offices of UNO leaders, and of the violent takeover of the city hall and a radio station in Managua. Also disturbing are the reports of renewed Contra activity. The property dispute is raging over laws passed in the last two months of the outgoing Sandinista government that granted titles to Sandinista loyalists who were given government-owned property, including houses, vehicles, and farmland. The Chamorro government is pledged not to take away property that was given to the poor or to the campesinos in its effort to reacquire the property.

The volatile situation, produced by both the contras and Sandinista militants, has the potential to exacerbate the polarization that remains in the country and, more critically, to explode into a major conflagration. The Chamorro government is attempting to negotiate a settlement on the property issue with the Sandinista leadership in an effort to reach an accommodation that will be satisfactory to all concerned. Some Sandinista leaders have spoken of the need to rectify the situation for the sake of the party's prestige and credibility. I hope that the party leaders will assert their authority over the militants so that calm can be restored in order to permit this issue to be peacefully resolved in the same spirit that the Sandinistas relinquished power after their defeat at the polls last year.

ROGER MICHAEL MAHONY: FIRST NATIVE-BORN ANGELENO NAMED TO COLLEGE OF CARDINALS

Mr. SEYMOUR. Mr. President, today marks a great day for Roman Catholics of my State, as well as for Californians of all faiths, for today in Rome the first native-born Californian was elected to the College of Cardinals of the Roman Catholic Church by Pope John Paul II.

Cardinal Roger Michael Mahony has not only earned a place in the history of the Roman Catholic Church, but also in the history of my State. I ask the Senate to join with me in honoring him today. At this point, I ask that the announcement of the Archdiocese of Los Angeles be inserted in the RECORD.

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

BIOGRAPHY OF CARDINAL ROGER MAHONY

The first native Angeleno to serve as Catholic Archbishop of Los Angeles, Roger Michael Mahony was born in Hollywood on February 27, 1936, and called North Hollywood home until 1962 when he was ordained a priest for the Diocese of Monterey-Fresno (now the Diocese of Fresno).

His parents, Loretta Marie (Baron) and the late Victor James Mahony, sent him to the grammar school at their parish, St. Charles Borromeo, North Hollywood.

After graduating from grade school, Mahony attended the Los Angeles College Preparatory Seminary in 1950 and entered Our Lady Queen of the Angels Seminary in San Fernando in 1954.

He received an A.A. degree in 1956 and continued his studies for the priesthood at St. John's Seminary College in Camarillo, where he earned his B.A. degree in 1958. From 1958 until 1962, Mahony was a student at St. John's Theologate and earned an S.T.B. degree.

Although Mahony was from the Los Angeles Archdiocese, he decided to become a priest for the Diocese of Monterey-Fresno because there was a greater need for priests in that primarily rural part of California, and because of a special desire to minister to the Hispanic community, many of them migrant farm workers in the San Joaquin Valley.

Following his ordination to the priesthood by Bishop Aloysius J. Willinger, C.Ss.R., in Fresno's St. John's Cathedral on May 1, 1962, Father Mahony served as assistant pastor of the Cathedral parish until the following September when he went to the National Catholic School of Social Service at the Catholic University of America, Washington, D.C.

In June, 1964, having earned a master's degree in social work, Mahony returned to Fresno and became the diocesan director of Catholic Charities and Social Service, executive director of the local Catholic Welfare Bureau, executive director of the Infant of Prague Adoption Service, and chaplain to the St. Vincent de Paul Society.

During this time, he was in residence at St. Genevieve's parish, becoming administrator of the parish in September, 1964, and pastor three years later. Also in 1967, Pope Paul VI named him a Chaplain to His Holiness, with the title of "Reverend Monsignor."

Mahony served as an instructor and assistant professor of social work at Fresno State University from 1965 until 1967.

In December, 1968, he moved to St. John's Cathedral, becoming its rector in May, 1973. In 1970, Msgr. Mahony became chancellor of the Diocese of Fresno under Bishop Hugh A. Donohoe.

Pope Paul appointed Mahony titular bishop of Tamascani and auxiliary to the bishop of Fresno in January, 1975, and Bishop Donohoe ordained him to the episcopate on the Feast of St. Joseph, March 19. As auxiliary bishop, he also became vicar general of the diocese.

Gov. Edmund G. (Jerry) Brown appointed Bishop Mahony as the first chairman of the California Agricultural Labor Relations Board in 1975. The board was instrumental in settling many of the labor disputes between the United Farm Workers Union and various growers in the state.

Bishop Mahony was named the third bishop of Stockton by Pope John Paul II on February 26, 1980, and was installed as bishop on April 17, 1980.

When the Archdiocese of Los Angeles became vacant with the retirement of Cardinal Timothy Manning, Mahony was appointed archbishop by Pope John Paul on July 16, 1985. The following September 5, Archbishop Mahony was installed in St. Vibiana's Cathedral as Los Angeles' fourth archbishop.

To care more effectively for the 3.4 million Catholics in his three-county see, in 1986 Archbishop Mahony established five pastoral regions, each headed by its own auxiliary bishop.

He also convened an Archdiocesan Convocation which took place November 1-2, 1986, after a year of preparation. Through meetings at the local parish and regional levels, culminating with the Convocation itself, priests, religious and lay leaders prioritized the needs of the Catholic community and developed a pastoral plan to meet those needs.

A pastoral plan for the huge Hispanic community had been announced the previous June at Celebración '86, held in Dodger Stadium.

The Archbishop has been an outspoken leader in protecting the rights and interests of immigrants. The Catholic Charities of the Los Angeles Archdiocese processed more applications for amnesty under the 1986 Immigration Reform and Control Act than any other single agency in the country.

Since becoming a bishop in 1975, Mahony has served on numerous committees and commissions of the National Conference of Catholic Bishops (NCCB) and the United States Catholic Conference (USCC). He is presently the chairman of the NCCB Committee on Farm Labor, a member of the NCCB Committee on Migration and Refugees, a member of the NCCB Ad Hoc Committee on Stewardship, and a consultant to the NCCB Committee for Pro-Life Activities.

A member of the USCC Committee on Social Development and World Peace, he served as chairman of the International Section from 1987 until 1990. In this capacity, Archbishop Mahony led fact-finding missions to the Middle East, Central America, and Southeast Asia, subsequently developing position papers on achieving peace with justice in these regions adopted by the American bishops.

In November, 1990, when the United States was readying itself to use armed force to eject the occupying troops of Iraq from Kuwait, the Archbishop sent a letter to Secretary of State James Baker III, asking the government to weigh the Catholic Church's criteria for considering warfare "just" before engaging in combat. This letter, later adopted by the NCCB/USCC as its own, helped to spark a national debate on the morality of war.

Pope John Paul has appointed and reappointed Archbishop Mahony to the Pontifical Council of Justice and Peace; his current term expires in 1995. He is also a member of the Pontifical Council for Pastoral Care of Migrants and Itinerant People (term expires 1996) and the Pontifical Council for Social Communications (term expires 1994).

As an appointee of the Pope, the Archbishop participated in the worldwide Synod of Bishops on the Role of the Laity in the Church and the World during October, 1987.

Archbishop Mahony has received honorary doctorates from Loyola Marymount University, Los Angeles (1986); the University of Portland, Oregon (1988); and the University of Notre Dame, South Bend, Indiana (1989).

He has been a member of the board of trustees of the Catholic University of America; the Los Angeles 2000 Committee; the Federal Commission on Agricultural Workers; the Blue Ribbon Committee for Affordable Housing, City of Los Angeles; and the Commission to Draft an Ethics Code for Los Angeles City Government.

On May 29, 1991, at his weekly general audience, Pope John Paul II announced that he would elevate Archbishop Mahony and 21 others to the College of Cardinals at a consistory to be held on June 28, 1991.

THE FOURTH VICTIM OF THE NAZI-SOVIET PACT

Mr. HELMS. Mr. President, I am pleased to cosponsor the resolution of the senior Senator from South Dakota, [Mr. PRESSLER]—a resolution that acknowledges the fourth victim of the Nazi-Soviet Pact of 1939, namely, the Romanian lands of Bessarabia and Northern Bucovina, or Moldavia. Although the Hitler-Stalin pact was signed by emissaries of Stalin and Hitler before World War II, the effects of that pact are vividly alive today for the people of the Baltic States and Moldavia.

On August 23, 1939, the worst and most cruel tyrants of the century ruined the lives of millions of people and the course of history. Thousands of people from Lithuania, Latvia, Estonia, and Moldavia were deported to Siberia. Those who survived, and their descendents, have been forced to live under communism's yoke.

Mr. President, I am pleased to note that these nations are fighting peacefully to regain their freedom. The Baltic States have democratically elected governments that deserve our support, assistance, and recognition. Today, they are in a diplomatic battle to remove Soviet forces from their territory. The United States has never recognized the incorporation of the Baltic States into the Soviet Union.

The situation in Soviet-occupied Moldavia is equally tragic. However, according to United States policy, Moldavia is not in the same legal category as the Baltic States, although it, too, was illegally seized by the Soviet Union. The documents I am about to cite, show how Moldavia was forcefully seized from Romania in 1940.

Two years ago, on May 10, 1989, I spoke on the Senate floor, publishing for the first time the Nazi-Soviet Pact, its secret protocols, and related diplomatic documents that I found in the German, British, and American archives. These documents were distributed in Soviet-occupied Lithuania, Latvia, and Estonia.

Several months later, the Soviet central government finally acknowledged the existence of the Pact with one sidebar—the governments of the Baltic States asked for membership in the Soviet Union. Mr. President, this claim is preposterous and refuted by our longstanding nonrecognition policy of the Soviet annexation.

Mr. President, the Baltic States were not enough for the tyrannical drafters of the Pact. Hitler and Stalin had one more victim in mind—the Romanian province of Moldavia. According to the secret supplementary protocol to the Nazi-Soviet Pact, Nazi Germany formerly declared its disinterest in Bessarabia. Article 3 of the secret supplementary protocols reads as follows:

As regards southeastern Europe, Soviet interest in Bessarabia is emphasized. The Ger-

man side declares its complete lack of interest in these areas.

In June 1940 the Soviet Union poised Red Army troops on the border of the Romanian province of Bessarabia. On June 26, the Romanian Minister to Moscow, George Davidescu, was summoned by Minister Molotov. He was handed an ultimatum making two demands. The first was to return at any price Bessarabia to the Soviet Union, and the second to transmit to the Soviet Union Northern Bucovina.

Mr. President, both of these demands were completely unreasonable and unprovoked. Bessarabia and Northern Bucovina are traditionally Romanian lands. The people of Bessarabia and Northern Bucovina speak the Romanian language, which is of Latin origin. They posed no menace to the Soviet Union.

The ultimatum further stated that:

In 1918, profiting from Russia's military weakness, Romania took from the Soviet Union a part of her territory, thus striking a blow at the secular unity of Bessarabia, principally inhabited by Ukrainians, with the Soviet's Republic of the Ukraine.

Mr. President, this assertion is far from reality. According to demographic statistics taken in 1930, Romanians comprised 56 percent of Bessarabia's territory, Russians 13 percent and Ukrainians 12 percent. The percentage of Romanians in Bessarabia fell significantly according to census statistics in 1817 which recorded Romanian as 87 percent of the population. Intense Russification in the period 1812–62 had taken its toll. The percentage of Moldavians diminished by 30 percent from 1817 to 1930.

The much smaller Romanian nation had no choice but to capitulate to her much larger neighbor's demands. Having recently witnessed the brutal occupation of Lithuania, Latvia, and Estonia earlier that month, and lack of a protest from the allied nations, the leaders of Romania understood the brutality of the Soviet regime. In order to prevent major bloodshed, the Romanian government agreed to evacuate Bessarabia. The nightmare for the Romanian people of Moldavia had just begun.

Mr. President, the resolution introduced today is an historic document. The resolution gives legal justification to the plea of the Romanian people of Moldavia for self-determination and recognition of their land as Soviet-occupied.

Tomorrow, the 51st anniversary of Soviet occupation, Moldavians will commemorate this sad day in their history. These people deserve the right to determine their own future. I lend them my support.

Mr. SYMMS. Mr. President, I have the utmost respect for the majority leader, and I know his frustration. I have said to him that being the majority leader of the U.S. Senate probably is the second hardest job in the United States. No question about that.

But I have to say that these objections that have been lodged are totally within the rules of the Senate. There is a deep division, philosophically, in this Senate and by individual Senators that represent sovereign States about the protection of the rights of the second amendment of the Constitution. That has been a very difficult thing for many of us. We do not like it. We have been defeated. The gun control people have had a major victory by adoption of this amendment.

I said to the Senator last week when I was the Republican manager on the highway bill, the leader was cooperative and deserved all credit. If my memory serves me correctly, it was the distinguished occupant of the chair, the former Governor of Florida, who was doing his job for Florida, that held us up most of the last day on his amendments. I respect that. He was doing what he thought he should do to defend his State.

I know that the President makes those statements, but I think that the crime bill the President sent down from the White House to Capitol Hill is not the crime bill that we are talking about passing. The crime bill we have here today that will be passed probably next week, when we return after the 4th of July, is a different bill. So I do not think individual Senators can be expected to just accept that without trying to put their imprints on it. That it just the way the system works.

I have no apologies to make for any of those on this side, including myself, that are not yet to go into a unanimous-consent agreement on limitations on amendments other than what we have already agreed to.

I think we made a major concession from those on my side of the aisle that agreed to the unanimous-consent agreement that previously passed today, and I think we made great headway, and the majority leader deserves commendation that he brought the Senate this far.

If my sense of this body has any validity, I think the big hurdle is over and things will go rapidly when we return. I say that with all respect to the leader, and to the distinguished occupant of the chair, who I say is a Democrat.

Mr. MITCHELL. A very good one.

Mr. President, I want to make it clear, as I thought I did in my remarks, that I do not question the right of any Senator under the rules to object to a unanimous-consent request. I do not object to the right or the duty of any Senator who aggressively represents the interest of the persons in his or her State. What I object to is the President making these campaign speeches without disclosing the full circumstances of the delays.

The President clearly seeks to create a political advantage for himself and for Republicans by criticizing the democratic Congress for not completing action on his bills. That creates a highly misleading impression among the American people, because it does not disclose the truthful fact that it is Republican Senators who are preventing the Senate from completing action on those bills.

I do not challenge the right of a Republican Senator to object. That right exists for any Senator. What I challenge, and what I strongly object to, and what I deeply resent, is the misleading statements made by the President, intended for the sole purpose of creating a political advantage for himself and his political party, without disclosing the full facts with respect to delay. That is my concern about it.

The Senator from Idaho and every Senator, myself included, has rights under the rules, and there is nothing inappropriate about a Senator exercising his or her rights under the rules. I wish to make that perfectly clear.

I think it is inappropriate, and I think it is wrong, and I think it is misleading for the President to make these campaign speeches to create a misleading impression by not disclosing the full circumstances in making that criticism.

Mr. President, I would be pleased to give the Senator the last word on this subject, if he has anything more he wants to say. I think I have made my point.

Mr. SYMMS. Mr. President, our able leader is such a master himself that I am sure his side of the story is getting out. He is making his case very well.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Items Nos. 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, and the nominations placed on the Secretary's desk of the Foreign Service.

I further ask unanimous consent that the nominees be confirmed en bloc, any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The nominations, considered and confirmed, en bloc, are as follows:

DEPARTMENT OF STATE

John E. Bennett, of Washington, a career member of the Senior Foreign Service, class of counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Equatorial Guinea.

Mary Ann Casey, of Colorado, a career member of the Senior Foreign Service, class

of counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic and Popular Republic of Algeria.

William Harrison Courtney, of West Virginia, a career member of the Senior Foreign Service, class of counselor, for the rank of Ambassador during his tenure of service as U.S. Commissioner for the Bilateral Consultative Commission and the Joint Consultative Commission established by the Threshold Test Ban Treaty [TTBT] and the Peaceful Nuclear Explosions Treaty [PNET].

John Thomas McCarthy, of New York, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Tunisia.

Nicholas Platt, of the District of Columbia, a career member of the Senior Foreign Service, class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Islamic Republic of Pakistan.

Gordon S. Brown, of California, a career member of the Senior Foreign Service, class of minister-counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Islamic Republic of Mauritania.

Robert H. Pelletreau, Jr., of Connecticut, a career member of the Senior Foreign Service, class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Arab Republic of Egypt.

J. Stapleton Roy, of Pennsylvania, a career member of the Senior Foreign Service, class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the People's Republic of China.

Johnnie Carson, of Illinois, a career member of the Senior Foreign Service, class of counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Uganda.

Lynn Marvin Hansen, of Colorado, for the rank of Ambassador during his tenure of service as U.S. Representative on the Conventional Armed Forces in Europe [CFE] Joint Consultative Group and to the Negotiations on Conventional Armed Forces in Europe [CFE].

Jane E. Becker, of the District of Columbia, a career member of the Senior Foreign Service, class of counselor, to be Representative of the Ambassador Extraordinary and Plenipotentiary of the United States of America to the Vienna Office of the United Nations and Deputy Representative of the United States of America to the International Atomic Energy Agency, with the rank of Ambassador.

Richard W. Carlson, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Seychelles.

PEACE CORPS NATIONAL ADVISORY COUNCIL

The following-named persons to be members of the Peace Corps National Advisory Council for the terms indicated:

John J. McCarthy, of California, for a term expiring October 6, 1992.

Craig R. Stapleton, of Connecticut, for a term expiring October 6, 1991.

Myron A. Wick III, of California, to be a member of the Peace Corps National Advisory Council for a term expiring October 6, 1992.

Tom G. Kessinger, of Pennsylvania, to be a member of the Peace Corps National Advisory Council for a term expiring October 6, 1991.

Niara Sudarkasa, of Pennsylvania, to be a member of the Peace Corps National Advisory Council for a term expiring October 6, 1991.

BOARD FOR INTERNATIONAL BROADCASTING

Lane Kirkland, of the District of Columbia, to be a member of the Board for International Broadcasting for a term expiring April 28, 1993 (reappointment).

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE FOREIGN SERVICE

Foreign Service nominations beginning Keith Bovetti, and ending Dale Slaght, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 24, 1991.

Foreign Service nominations beginning David P. Dod, and ending Victor D. Comras, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 24, 1991.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

MESSAGES FROM THE HOUSE

At 1:19 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 543. An act to establish the Manzanar National Historic Site in the State of California;

H.R. 2280. An act to amend title 38, United States Code, to extend and improve veterans health care programs;

H.R. 2508. An act to amend the Foreign Assistance Act of 1961 to rewrite the authorities of that act in order to establish more effective assistance programs and eliminate obsolete and inconsistent provisions, to amend the Arms Export Control Act and to redesignate that act as the Defense Trade and Export Control Act, to authorize appropriations for foreign assistance programs for fiscal years 1992 and 1993, and for other purposes;

H.R. 2698. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1992, and for other purposes;

H.R. 2699. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1992, and for other purposes;

H.R. 2707. An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1992, and for other purposes;

H.J. Res. 182. Joint resolution designating the month of November 1991 and the month of November 1992, each as "National American Indian Heritage Month"; and

H.J. Res. 183. Joint resolution to designate the second Sunday in October of 1991 as "National Children's Day".

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 158. Joint resolution authorizing the use of the rotunda of the Capitol by the National League of POW/MIA Families for a ceremony to honor the members of the Armed Services and civilians still imprisoned, missing, and unaccounted for as a result of the Vietnam conflict.

The message further announced that pursuant to the provisions of section 3(a) of Public Law 86-380, the Speaker appoints the following Members on the part of the House to the Advisory Commission on Intergovernmental Relations: Mr. WEISS and Mr. THOMAS of Wyoming.

The message also announced that pursuant to the provisions of section 2923(e)(2) of Public Law 101-510, the Speaker appoints from private life Mr. Don Gray of Fort Washington, MD, to the task force to make findings and recommendations for environmental restoration at military bases scheduled for closure on the part of the House.

ENROLLED BILL AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker has signed the following enrolled bill and joint resolutions:

S. 674. An act to designate the building in Monterey, TN, which houses the primary operations of the U.S. Postal Service as the "J.E. (Eddie) Russell Post Office Building", and for other purposes;

H.J. Res. 72. Joint resolution to designate December 7, 1991, as "National Pearl Harbor Remembrance Day";

H.J. Res. 138. Joint resolution designating the week beginning July 21, 1991, as "Lyme Disease Awareness Week";

H.J. Res. 149. Joint resolution designating March 1992 as "Women's History Month"; and

H.J. Res. 259. Joint resolution designating July 2, 1991, as "National Literacy Day".

The enrolled bill and joint resolutions were subsequently signed by the President pro tempore [Mr. BYRD].

MEASURES REFERRED

The following bills and joint resolutions were read the first and second times by unanimous consent, and referred as indicated:

H.R. 543. An act to establish the Manzanar National Historic Site in the State of California; to the Committee on Energy and Natural Resources.

H.R. 2280. An act to amend title 38, United States Code, to extend and improve veterans health care programs.

H.R. 2508. An act to amend the Foreign Assistance Act of 1961 to rewrite the authorities of that act in order to establish more effective assistance programs and eliminate obsolete and inconsistent provisions, to amend the Arms Export Control Act and to redesignate that act as the Defense Trade and Export Control Act, to authorize appropriations for foreign assistance programs for fiscal years 1992 and 1993, and for other purposes; to the Committee on Foreign Relations.

H.R. 2698. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and related agencies programs for the fiscal year ending September 30, 1992, and for other purposes; to the Committee on Appropriations.

H.R. 2699. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1992, and for other purposes; to the Committee on Appropriations.

H.R. 2707. An act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1992, and for other purposes; to the Committee on Appropriations.

H.J. Res. 182. Joint resolution designating the month of November 1991 and the month of November 1992, each as "National American Indian Heritage Month"; to the Committee on the Judiciary.

H.J. Res. 183. Joint resolution to designate the second Sunday in October of 1991 as "National Children's Day"; to the Committee on the Judiciary.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 158. Joint resolution authorizing the use of the rotunda of the Capitol by the National League of POW/MIA Families for a ceremony to honor the members of the Armed Services and civilians still imprisoned, missing, and unaccounted for as a result of the Vietnam conflict; to the Committee on Rules and Administration.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2250. An act to amend title 38, United States Code, to extend and improve veterans health care programs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 12. A bill to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes (Rept. No. 102-92).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 218. A bill to require the Secretary of Commerce to make additional frequencies available for commercial assignment in order to promote the development and use of new telecommunications technologies, and for other purposes (Rept. No. 102-93).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PRESSLER (for himself, Mr. SYMMS, Mr. COCHRAN, Mr. KASTEN, and Mr. GRASSLEY):

S. 1419. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for amounts paid by a health care professional as interest on student loans if the professional agrees to practice medicine for at least 2 years in a rural community; to the Committee on Finance.

By Mr. COCHRAN:

S. 1420. A bill to amend the Community Reinvestment Act of 1977 to reduce onerous recordkeeping and reporting requirements for regulated financial institutions, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. COATS:

S. 1421. A bill to extend until January 1, 1996, the suspension of duty on certain clock radios; to the Committee on Finance.

By Mr. HARKIN (for himself, Mr. WELLSTONE, and Mr. CONRAD):

S. 1422. A bill to provide disaster assistance to producers on a farm who suffered certain losses in the quantity of the 1990 or 1991 crop of a commodity harvested as the result of damaging weather or related condition, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DODD (for himself, Mr. RIEGLE, Mr. D'AMATO, Mr. SANFORD, Mr. WIRTH, Mr. BRYAN, Mr. BOND, Ms. MIKULSKI, and Mr. SIMON):

S. 1423. A bill to amend the Securities Exchange Act of 1934 with respect to limited partnership rollups; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CONRAD (for himself and Mr. BURDICK):

S. 1424. A bill to amend chapter 17 of title 38, United States Code, to require the Secretary of Veterans Affairs to conduct a mobile health care clinic program for furnishing health care to veterans located in rural areas of the United States; to the Committee on Veterans Affairs.

By Mr. DIXON:

S. 1425. A bill to authorize the President to appoint a chief executive officer for the Resolution Trust Corporation; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BUMPERS (for himself, Mr. MITCHELL, Mr. BAUCUS, Mr. HARKIN, Mr. WELLSTONE, and Mr. LIEBERMAN):

S. 1426. A bill to authorize the Small Business Administration to conduct a demonstration program to enhance the economic opportunities of startup, newly established, and growing small business concerns by providing loans and technical assistance through intermediaries; to the Committee on Small Business.

By Mr. RUDMAN (for himself and Mr. SMITH):

S. 1427. A bill to amend title 28, United States Code, to authorize the appointment of an additional bankruptcy judge; to the Committee on the Judiciary.

By Mr. ROTH:

S. 1428. A bill to amend the Foreign Assistance Act of 1961, the Export-Import Bank Act of 1945, and the Commodity Credit Corporation Charter Act to prohibit the noncompetitive awarding of insurance contracts on certain Government-supported exports; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KASTEN (by request):

S. 1429. A bill to amend the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979, as amended, to authorize appropriations for fiscal years 1992 and 1993, and for other purposes.

S. 1430. A bill to amend the Federal Railroad Safety Act of 1970, and for other purposes.

By Mr. CRANSTON (for himself, Mr. D'AMATO, and Mr. SANFORD):

S. 1431. A bill to amend the Housing Act of 1949; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DODD:

S. 1432. A bill to extend the existing suspension of duty on 3,5,6-trichlorosalicylic acid; to the Committee on Finance.

By Mr. DOLE:

S.J. Res. 173. Joint resolution designating 1991 as the 25th anniversary year of the formation of the President's Committee on Mental Retardation; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself, Mr. PELL, Mr. HELMS, Mr. PRESSLER, Mr. BYRD, Mr. NICKLES, and Mr. RIEGLE):

S. Res. 147. Resolution to express Senate opposition to the use of force to resolve political differences in Yugoslavia; considered and agreed to.

By Mr. PRESSLER (for himself and Mr. HELMS):

S. Res. 148. Resolution to express the sense of the Senate that the United States should support the right to self-determination of the people of the Republic of Moldavia and northern Bucovina; to the Committee on Foreign Relations.

By Mr. DOLE (for himself and Mrs. KASSEBAUM):

S. Res. 149. A resolution to commend the 1st Infantry Division (Mechanized) for their outstanding performance during Operations Desert Shield and Desert Storm; considered and agreed to.

By Mr. MOYNIHAN (for himself, Mr. MACK, Mr. PRESSLER, Ms. MIKULSKI, Mr. MCCAIN, Mr. D'AMATO, Mr. KERRY, Mr. SARBANES, Mr. GRAHAM, Mr. INOUYE, Mr. JOHNSTON, Mr. GRASSLEY, Mr. DECONCINI, Mr. DIXON, Mr. SPECTER, Mr. HARKIN, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, and Mr. HATCH):

S. Res. 150. A resolution expressing the sense of the Senate urging the President to call on the President of Syria to permit the extradition of fugitive Nazi war criminal Alois Brunner; to the Committee on Foreign Relations.

By Mr. SPECTER (for himself and Mr. WOFFORD):

S. Res. 151. A resolution expressing the sense of the Senate that research on development of high-speed ground transportation systems and a modern infrastructure in the United States should be encouraged, and that participation of the private sector in this country and Japan will be necessary and welcome; to the Committee on Foreign Relations.

By Mr. CRANSTON:

S. Con. Res. 50. Concurrent resolution expressing the sense of the Congress relating to the rescue of approximately 14,000 Ethiopian Jews from Ethiopia to Israel, and to the current famine in Ethiopia; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COCHRAN:

S. 1420. A bill to amend the Community Reinvestment Act of 1977 to re-

duce onerous recordkeeping and reporting requirements for regulated financial institutions, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

SMALL BANK PAPERWORK REDUCTION ACT

Mr. COCHRAN. Mr. President, today I am introducing the Small Bank Paperwork Reduction Act. This bill recognizes the importance of community banks to our financial system and is designed to relieve the onerous burden of needless paperwork that is imposed on them by Federal laws and regulations. The provisions of this bill do not address any law or regulation which is necessary to ensure that a bank is operated in a safe and sound manner. In fact, if the provisions of this bill become law, many banks will be even more safe and more sound because their employees will be able to evaluate loan applications and perform other functions necessary to a bank's operation instead of spending their time filling out paperwork.

Bankers are not the only ones who are concerned about the regulatory burden on banks. Some regulators also see the need to consider the current burden on banks before additional requirements are imposed. Martha Segar, a former member of the Federal Reserve Board, has said, "A compelling need should be demonstrated before new legal requirements are added to the array of existing rules."

A newsletter published by the Conference of State Bank Supervisors included this comment: "The cumulative effect of too many laws and regulations may impair bank profitability to the disadvantage of bank safety and soundness." This newsletter used the analogy of weight training. "Generally, you can think of regulation as a weight-training belt; wearing it when you exercise makes you stronger. But as you add more and more weight to the belt, eventually you reach a point at which the weight does more harm than good. Instead of building up your muscles, you hurt yourself, and then you can't exercise at all."

Mr. President, many small banks have had too much weight added to their belts. They are suffering under the mountains of paperwork on which their employees must spend an inordinate amount of time. In fact many small banks have been forced to hire full-time compliance officers to make sure all the papers are filled out and filed properly.

Some of this paperwork is necessary and proper to ensure that depositors' funds are protected. However, much of the reporting is duplicative, and some is downright superfluous. The highly subjective and inconsistent evaluations of bank examiners make it even more difficult for banks to determine how much documentation is enough.

The Small Bank Paperwork Reduction Act is legislation that will provide alternatives to the massive amounts of paper that occupy rooms full of filing cabinets in small banks. Its provisions will allow small banks to concentrate on what they do best—lending to their communities—and will add a degree of objectivity to the evaluation of the performance of medium-sized banks. It will provide some commonsense changes to laws and regulations that have been implemented in a less-than-commonsense manner. And it will require regulatory agencies to evaluate their own policies to identify those that are obsolete or duplicative.

COMMUNITY REINVESTMENT ACT AMENDMENTS

The centerpiece of the bill is a reform of the way in which banks are judged to be meeting the credit needs of their communities. The Community Reinvestment Act of 1977 [CRA] was a laudable piece of legislation. In fact, even as it has been amended over the years, the law itself is not at all unreasonable. The cornerstone of the CRA reads:

> In connection with its examination of a financial institution, the appropriate Federal financial regulatory agency shall (1) assess the institutions' record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of such institution; and (2) take such record into account in its evaluation of an application for a deposit facility by such institution.

When CRA was introduced in the Senate in 1977, its author, Senator Proxmire, stated his belief that CRA would require no increase in paperwork. The Banking Committee's report on CRA said,

> The Committee believes that the regulatory agencies already have sufficient data available to carry out the intent of this Act without requiring additional redtape. * * * [A]dditional reporting burdens would not be necessary or appropriate to the enforcement of this Title.

I do not doubt the sincerity of those statements which were made in 1977, but in the ensuing years since enactment of CRA, the very redtape the committee considered inappropriate to the enforcement of CRA has become a millstone around the neck of small banks.

The problem, Mr. President, is not in the law itself, but in the manner in which the law is being enforced. One problem is that the regulations promulgated to implement the law are not clear in the guidance for complying with the law. This leaves tremendous discretion to the individual examiners who have been requiring banks to prove their compliance with the law in inconsistent—and sometimes absurd—ways. What complicates this situation further is that the examiners serve as prosecutor, judge, jury, and appeals court in the evaluation of a bank's compliance with CRA.

The legislation I have introduced will provide relief from this ambiguous implementation of the law. It will allow examiners to spend a minimal amount of time on CRA compliance evaluations and spend more time where they should be concentrating—the safety and soundness of a bank's activities.

Under this bill, small banks will be required to identify the communities they intend to serve; they will make available to the public a list of the types of credit they offer; and they will make available to the public any letters they received concerning their performance in meeting the credit needs of their community. This provision will also apply to branches of institutions if the branches are located in a small town and have deposits of less than $100 million. This reduced paperwork burden will only be available to banks which have proven that they have not discriminated in their lending practices at any time in the previous 10 years.

Medium-sized banks will have the option of being examined under a new, more objective process. This will allow a bank to submit a plan to its regulatory agency describing its strategy for meeting the credit needs of its community. If the plan meets certain criteria, it will be approved by the regulator and the bank will be examined every 3 years, rather than the current practice of annual examinations.

For both the small- and medium-sized banks, an annual declaration of compliance will be required, with severe penalties for filing a fraudulent declaration.

For banks with less than $1 billion in assets, adequate compliance with CRA will provide a 2-year shelter against dilatory challenges to their expansion plans.

My bill will allow any bank to appeal a negative CRA rating given by a bank examiner.

In addition, this bill will prohibit examiners from requiring banks to account for their loans and deposits on a geographic basis. In its consideration of the original CRA, the Banking Committee expressly rejected the notion of credit allocation. By requiring banks to geocode their loans, the examiners are imposing a requirement clearly contrary to the intent of Congress.

MISCELLANEOUS AMENDMENTS

Mr. President, in addition to CRA, there are numerous laws and regulations that have an onerous effect on small banks. My bill would change several of those requirements.

A number of these laws and regulations provide no real protection for consumers, and in fact are a nuisance to consumers as well as banks. These are provisions we have chosen to correct in this legislation.

Most of these changes affect reporting deadlines and eliminate some report duplication by various agencies.

The bill also provides small banks relief from some data-processing require-

ments as they relate to currency transaction reports, or CTR's. Another provision sets a $100,000 de minimis level for real estate transactions that require a certified or licensed appraiser to perform the appraisal.

CONCLUSION

Mr. President, I urge the members of the Senate Banking Committee to adopt the approaches to small bank paperwork relief included in this bill as they consider banking legislation later this summer. That legislation is sure to produce more laws—and therefore more regulations—that banks will have to comply with. In the midst of adding new burdens on them, I believe small banks should be given a reprieve from unnecessary paperwork burdens that divert attention from what those banks are intended to do.

Let's give them a break. They deserve it.

Mr. President, I ask unanimous consent that the text and a summary of the bill be included at this point in the RECORD.

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

S. 1420

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 "Small Bank Paperwork Reduction Act".

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the goals of the Community Reinvestment Act of 1977 and other consumer protection laws are laudable;

(2) the paperwork required to comply with the Community Reinvestment Act of 1977 is superfluous for the vast majority of community banks, since the traditional relationship of these banks to their communities is such that the credit needs of their communities are met in the normal course of business;

(3) small financial institutions are small businesses, and as such are hindered significantly by onerous paperwork requirements;

(4) the cumulative effect of the paperwork requirements that are imposed on financial institutions associated with such laws should be considered before imposing new requirements; and

(5) in some cases, existing paperwork requirements applicable to financial institutions should be eliminated.

TITLE I—COMMUNITY REINVESTMENT ACT AMENDMENTS

SEC. 102. MODIFIED EVALUATIONS.

The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended by adding at the end the following new sections:

"SEC. 808. SMALL INSTITUTION AND BRANCH PROVISIONS.

"(a) SCOPE.—This section shall only apply during a calendar year—

"(1) to a federally regulated financial institution that—

"(A) has not been found to be in violation of section 701 of the Equal Credit Opportunity Act, or any other substantive provision of such Act, for the 10-year period preceding such calendar year; and

"(B) had total assets as of the preceding December 31, of not more than—

"(i) $250,000,000, if the preceding year is 1991;

"(ii) $260,000,000, if the preceding year is 1992;

"(iii) $270,000,000, if the preceding year is 1993;

"(iv) $280,000,000, if the preceding year is 1994; and

"(v) $290,000,000, if the preceding year is 1995, or any year thereafter; and

"(2) to a branch of a federally regulated financial institution, if—

"(A) the institution has not been found to be in violation of section 701 of the Equal Credit Opportunity Act or any other substantive provision of such Act for the 10-year period preceding such calendar year; and

"(B) the branch—

"(i) had total deposits on December 31 of the preceding year of less than $100,000,000; and

"(ii) is located in a community with a population of not more than 50,000.

"(b) MODIFIED REPORTING.—In lieu of being evaluated under section 804 during the calendar year referred to in subsection (a), a regulated financial institution or branch described in subsection (a) shall—

"(1) declare in writing to the appropriate Federal financial supervisory agency that it is a regulated financial institution or branch described in subsection (a), and that it is in compliance with this subsection;

"(2) display any notices as required by the appropriate Federal financial supervisory agency concerning its compliance with the requirements of this Act; and

"(3) make available for public inspection information regarding the record of such institution or branch in meeting the credit needs of its entire community, including—

"(A) an accurate identification of the community it serves;

"(B) a list of the types of credit offered by the institution;

"(C) public comments received within the previous 2 years regarding the institution's or branch's service of the entire community's credit needs; and

"(D) copies of any declaration submitted under paragraph (1).

"(c) PENALTIES.—If the appropriate Federal financial supervisory agency finds that a regulated financial institution or branch has submitted intentionally false information to the appropriate Federal financial supervisory agency or otherwise willfully violated the requirements of subsection (b), such institution or branch—

"(1) shall, notwithstanding this section or section 810(d), be subject to the requirements of section 804 for a period of not more than 10 years; and

"(2) shall be subject to a fine of not more than $10,000.

"SEC. 809. MID-SIZED INSTITUTION PROVISIONS.

"(a) IN GENERAL.—This section shall only apply during a calendar year to a regulated financial institution that—

"(1) is not described in section 808(a); and

"(2) had total assets as of the preceding December 31, of not more than—

"(A) $750,000,000, if the preceding year is 1991;

"(B) $760,000,000, if the preceding year is 1992;

"(C) $770,000,000, if the preceding year is 1993;

"(D) $780,000,000, if the preceding year is 1994; and

"(E) $790,000,000, if the preceding year is 1995, or any year thereafter.

"(b) REGULATORY ELECTION.—A regulated financial institution described in subsection (a) shall notify the appropriate Federal financial institutions supervisory agency of its election either—

"(1) to be evaluated in accordance with section 804 and regulations promulgated thereunder; or

"(2) to submit a plan described in subsection (c) for the approval of the appropriate Federal financial supervisory agency.

Such regulated financial institution may, at any time, notify the appropriate Federal financial supervisory agency of a change in its election decision under this subsection.

"(c) COMMUNITY REINVESTMENT PLAN.—

"(1) PLAN CRITERIA.—For purposes of this subsection, the Federal Financial Institutions Examination Council shall, by rule, regulation, or order—

"(A) establish a list of activities, products, and services designed to assist a regulated financial institution in meeting the credit needs of its entire community;

"(B) assign a value to each activity, product, and service listed in accordance with subparagraph (A); and

"(C) specify a minimum aggregate value (based on the individual values assigned under subparagraph (B)) required for approval of an institution's plan under paragraph (3).

"(2) PLAN SUBMISSION.—To comply with this section, a regulated financial institution shall submit for approval to the appropriate Federal financial supervisory agency a plan to institute the activities and provide the products and services listed by such agency in accordance with paragraph (1)(A), *or equivalent activities, products, and services* that are intended to enhance the institution's ability to serve the credit needs of its entire community.

"(3) PLAN APPROVAL; NOTIFICATION.—If the plan submitted by a regulated financial institution includes a combination of activities, products, and services that meets the minimum aggregate value specified in accordance with paragraph (1)(C), the appropriate Federal financial supervisory agency shall approve such plan. Not later than 30 days after submission of the plan, the appropriate Federal financial supervisory agency shall notify the regulated financial institution in writing of the approval or nonapproval of such plan.

"(4) ANNUAL DECLARATION.—Once each year following the approval of a plan under paragraph (3), the regulated financial institution submitting such plan shall declare in writing to the appropriate Federal financial supervisory agency that it is complying with its approved plan. An institution that fails to submit such declaration, or is otherwise not in compliance with the plan, shall become subject to the requirements of section 804.

"(5) PERIODIC REVIEW.—

"(A) IN GENERAL.—Not less than 3 nor more than 4 years after the date of approval of a regulated financial institution's plan, and once every 3 years thereafter, the appropriate Federal financial supervisory agency shall evaluate the implementation of the activities and the provision of the products and services listed by each institution in its approved plan.

"(B) RATING.—On the basis of the review conducted under subparagraph (A), the appropriate Federal financial supervisory agency shall give the regulated financial institution a confidential rating of 'satisfactory' or 'unsatisfactory' compliance with its plan. Upon receipt of an unsatisfactory rating, the regulated financial institution shall be notified by the appropriate Federal financial supervisory agency of specific actions nec-

essary for the institution to achieve a satisfactory rating. Not later than 6 months after such notification, the appropriate Federal financial supervisory agency shall again evaluate the institution's compliance with its approved plan and provide a rating of such compliance. A rating of unsatisfactory resulting from the second evaluation referred to above shall be appealable under section 811.

"(6) DISQUALIFICATION FOR UNSATISFACTORY RATING.—An institution that receives a final rating of unsatisfactory under paragraph (5) shall be disqualified from making the election described in subsection (b) for a period of 5 years from the date of notification of such rating. Such institution shall be subject to the requirements of section 804 during the restricted 5-year period.

"SEC. 810. SAFE HARBOR.

"(a) IN GENERAL.—Notwithstanding section 804(2), an application for a deposit facility by a regulated financial institution that has less than $1,000,000,000 in total assets shall not be denied on the basis of such institution's compliance with this Act if such institution—

"(1) received a rating in its last evaluation under section 804 of outstanding or satisfactory in its record of meeting community credit needs, as provided in section 807(b);

"(2) maintains continued compliance with section 808; or

"(3) received a rating of satisfactory in its last review under section 809(c)(5).

"(b) BRANCH EVALUATIONS.—In carrying out an evaluation of an application by a regulated financial institution for a deposit facility under section 804(2), the appropriate Federal financial supervisory agency shall not consider the record of a branch of such institution in meeting the credit needs of its community if the branch is in compliance with the requirements of section 808.

"SEC. 811. APPEALS PROCESS.

"A regulated financial institution that receives a rating of needs to improve or substantial noncompliance in meeting community credit needs, as provided in section 807(d)(2), or a rating of unsatisfactory, as provided in section 809(c)(5), from the appropriate Federal financial supervisory agency may appeal such rating to the Appeals Panel in accordance with section 1012 of the Federal Financial Institutions Examination Council Act of 1978.

"SEC. 812. GEOGRAPHICAL CODING REQUIREMENT PROHIBITED.

"No Federal financial supervisory agency shall require a regulated financial institution to collect, prepare, file, or maintain data on lending or deposit patterns according to geographic location in order to assess such institution's compliance with this Act.".

SEC. 103. APPEALS OF UNSATISFACTORY RATINGS.

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

"SEC. 1012. ESTABLISHMENT OF APPEALS PANEL.

"(a) ESTABLISHMENT.—There is established within the Council the Appeals Panel.

"(b) FUNCTION.—The function of the Appeals Panel shall be to consider appeals brought by aggrieved regulated financial institutions under section 811 of the Community Reinvestment Act of 1977.

"(c) COMPOSITION.—The Appeals Panel shall be an ad hoc body, comprised of the chairman of the Council, or his or her designee, and not less than 2 or more than 4 additional individuals selected by the chairman of the Council. An officer or employee of the appropriate Federal financial supervisory agency (as defined in section 803 of the Community Reinvestment Act of 1977) that issued the rating being challenged shall not serve on the Appeals Panel.

"(d) PROCESS.—The chairman of the Council shall establish such rules and regulations as are necessary for the Appeals Panel to carry out its function under this section.".

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. REAL ESTATE SETTLEMENT PROCEDURES ACT.

Section 5(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(d)) is amended by striking the last sentence and inserting "The Secretary may specify a maximum period of time which may elapse between the submission of an application and the provision of the booklet. However, if such application is denied by the lender prior to the expiration of the time period referred to in the previous sentence, provision of the booklet shall not be required.".

SEC. 202. MODIFICATION OR WAIVER OF RIGHT OF RECISION.

Section 125(d) of the Truth in Lending Act (15 U.S.C. 1635(d)) is amended by striking ", if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies,".

SEC. 203. HOME OWNERSHIP DEBT COUNSELING NOTICE.

Paragraph (5) of section 106(c) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)(5)) is amended—

(1) by striking subparagraph (B) and inserting the following:

"(B) NOTIFICATION REQUIREMENTS.—The notification required in subparagraph (A) shall be made—

"(i) in a manner approved by the Secretary; and

"(ii) together with the first notice of home loan delinquency to a homeowner."; and

(2) in subparagraph (C), by striking "the expiration of the 45-day period under subparagraph (B)(ii)." and inserting "such notification is required to be made under subparagraph (B).".

SEC. 204. HOME MORTGAGE DISCLOSURES.

Section 304(a) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(a)) is amended by adding at the end the following:

"(3) Notwithstanding paragraph (1), a depository institution which has a branch office located within a primary metropolitan statistical area shall only be required to maintain and make available the information required by paragraph (1) for such branch.".

SEC. 205. REPORT FORMS.

Effective 6 months after the date of enactment of this Act, no insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act, shall be required to prepare, file, or maintain any form for the purpose of collection, analysis, or maintenance of appropriate data to further the purposes of, or to fulfill the requirements of the Fair Housing Act, other than a form for data collection, analysis, or maintenance required under the Home Mortgage Disclosure Act of 1975.

SEC. 206. BANK HOLDING COMPANY ASSET REPORTING.

Notwithstanding any other provision of law, a bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956, that—

(1) has combined assets of less than $150,000,000; and

(2) controls more than one bank,

shall not be required to file consolidated or parent-company-only financial statements any more frequently than semiannually.

SEC. 207. CURRENCY TRANSACTION REPORTS.

Section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(b)) is amended—

(1) by inserting "(1) IN GENERAL.—" after "(b)"; and

(2) by adding at the end the following:

"(2) RECORDKEEPING EXCEPTION.—Notwithstanding paragraph (1), an insured depository institution that has less than $250,000,000 in assets shall not be required to aggregate daily deposits to one account for the purpose of submitting any currency transaction reports required under this section.".

SEC. 208. CERTIFIED AND LICENSED REAL ESTATE APPRAISERS.

Section 1114 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3343) is amended by inserting before the period the following: ", except that the services of a State certified or licensed appraiser shall not be required for a federally related transaction having a value less than $100,000".

SEC. 209. PAPERWORK REDUCTION STUDY.

Not later than 18 months after the date of enactment of this Act, each appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act, shall complete an evaluation of its respective rules and regulations to determine whether any paperwork or reporting requirements are duplicative, obsolete, or unnecessarily burdensome, for the purpose of reducing such requirements, where possible.

SMALL BANK PAPERWORK REDUCTION ACT SUMMARY

TITLE I—COMMUNITY REINVESTMENT ACT (CRA)

A bank will have limited reporting responsibilities under CRA, if it (a) has not been found in violation of substantive nondiscrimination regulations in the previous 10 years; and (b) has less than $250 million in assets (with moderate increases each year for 5 years). A branch of a bank will have these same limited reporting requirements if the branch is in a town of less than 50,000 and has deposits of less than $100 million. A normal CRA examination of a bank will not take into account the activities of a branch that qualifies under this provision.

Any bank or branch of a bank referred to above will be required to delineate its community, post modified CRA notices in appropriate places, and have a public CRA file, including a list of the types of credit offered, any comments received from the public in the past 2 years on the bank's compliance with CRA, and any certification submitted to comply with this section.

An annual declaration will be required to certify compliance with this provision. Substantial penalties will be imposed for filing fraudulent information.

Any bank with between $250 million and $750 million in assets (with moderate increases over 5 years) will have the option to choose an alternative CRA rating process, as follows:

(a) The Federal Financial Institutions Examination Council (FFIEC) will establish a list of activities, products, and services intended to meet the goals of CRA and assign a value to each item listed. FFIEC will specify a minimum aggregate value that must be met by banks to qualify for the alternative examination process.

(b) A bank which chooses this option will submit a plan to its appropriate regulatory

agency describing its strategy to meet the credit needs of its community. A bank may substitute equivalent activities, products, or services for those on the list approved by the FFIEC, subject to the approval of its regulatory agency.

(c) Within 30 days of submission of the plan, the regulatory agency shall give notice of approval or disapproval. If the plan meets the "minimum value" criteria, it will be approved.

(d) A bank with an approved plan will issue annual declarations of its compliance with this provision. Examinations will take place every three years following approval of the plan. If a bank is found not in compliance, it will be notified of the actions it must take to come into compliance and be given 6 months to comply. If it is still not in compliance, it may appeal the decision. If, on appeal, the bank is found to be not in compliance, it shall be subject to the normal CRA examination process for 5 years.

Any bank which has less than $1 billion in assets and received an outstanding or satisfactory rating in its most recent examination (if it occurred within the past two years) shall not be subject to a challenge of an application for additional deposit facilities on CRA-compliance grounds.

No bank shall be required to code its loans and/or deposits according to geographic location to assess CRA compliance.

Any bank which receives a less-than-satisfactory rating may appeal that rating to an appeals panel to be created under the Federal Financial Institutions Examination Council.

MISCELLANEOUS AMENDMENTS

Real Estate Settlement Procedures Act—A time period may be established within which an estimate of settlement costs shall be provided to a borrower. Such estimate shall not be required if the lender has denied the loan within the given period of time.

Right of Rescission—Any federally regulated financial institution shall be allowed to offer to a mortgage borrower a waiver of the "right of rescission," under less restrictive circumstances than the current requirement.

Debt Counseling Notice—The Homeownership Debt Counseling notice requirement will be modified to allow banks to send these notices with the first notice of delinquency.

Home Mortgage Disclosure Act—(a) If a branch of a bank is located in Metropolitan Statistical Area (MSA), data from HMDA compliance may only be required from that branch, not the entire bank; (b) any bank which is subject to reporting under HMDA will not be subject to reporting under the Fair Housing Act.

Small Bank Holding Company reports—Multibank holding companies with consolidated assets of less than $150 million shall not be required to file consolidated or parent-company-only financial statements any more frequently than semi-annually.

Currency Transaction Reports—Any bank with less than $250 million in assets is not required to aggregate daily deposits to one account for the purpose of submitting currency transaction reports (CTRs).

Real Estate Appraisals—Real Estate transactions of less than $100,000 shall not be required to be appraised by a licensed or certified appraiser.

Paperwork Reduction Study—Each banking regulatory agency will be required to study their laws and regulations to determine which are duplicative, obsolete, or unnecessarily burdensome.

By Mr. HARKIN (for himself, Mr. WELLSTONE, and Mr. CONRAD):

S. 1422. A bill to provide disaster assistance to producers on a form who suffered certain losses in the quantity of the 1990 or 1991 crop of a commodity harvested as the result of damaging weather or related condition, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

DISASTER ASSISTANCE ACT

Mr. HARKIN. Mr. President, I am today introducing legislation to provide assistance to help alleviate the critical problems facing farm families, rural businesses, and communities caused by natural disaster in Iowa and other parts of our Nation.

In Iowa, extremely heavy rainfall has flooded crops and greatly delayed or prevented planting on millions of acres of land. Floods and excessive rainfall have also destroyed or damaged pasture and forage crops. For example, the Iowa Corn Growers Association has estimated that weather has prevented planting of corn on 1 million acres in Iowa that had been intended for corn. Of the approximately 12 million acres planted to corn, 2.8 million acres are estimated to have been planted between May 20 and May 30 and are expected to suffer a 15-percent yield reduction. In addition, 2.3 million acres were planted after June 1 and face a 30-percent potential yield loss.

Hence the Iowa Corn Growers estimates that the late planting and prevented planting have already caused a 17-percent reduction in Iowa's corn crop. Equally important, though, the late planting in wet soils has made the corn crop very vulnerable to soil compaction, hot and dry weather, insects, and disease. And ironically, parts of Iowa are now experiencing a shortage of rainfall just as the moisture needs of crops increase.

So it is clear that in general Iowa farmers are facing significant yield reductions and financial losses. The combination of adverse crop conditions could take losses in Iowa near $1 billion, depending of course on the weather. The situation is far more serious in particular areas of Iowa where the weather and crop conditions have been much worse than the average for the State. Farm families in those areas are confronting truly desperate financial problems caused by disaster conditions.

We must also keep in mind the impact that such natural disasters in agricultural areas have on whole communities and their economies and businesses. Sales of agricultural supplies have declined significantly as adverse weather conditions delayed or prevented planting. Reduced production also means there will also be less economic activity this fall from the hauling, storing, selling, and processing of agricultural commodities in communities affected by natural disaster. Moreover, when the farm economy suffers, businesses up and down main street in rural communities also suffer.

This spring's disaster conditions have hit farm families and rural communities at a very critical time. The past several years have allowed very little opportunity to recover from the crisis of the mideighties or to rebuild any financial cushion or reserves to help cover the losses that now are inevitable.

What farm families and rural communities need at this time is some assurance that meaningful steps are being taken to help them through this crisis. I regret to say that the steps taken by the administration have been too little and too late.

I have provided the Secretary of Agriculture with a number of suggestions for actions that the Department of Agriculture could take under its existing authority to alleviate a good share of the problems and the despair caused by the current disaster conditions. Among my suggestions were delaying any required repayment of advance deficiency payments without interest; providing price support on substitute crops, such as soybeans, grown on land where the planting of corn or other program crops is prevented; extending Federal Crop Insurance Program planting deadlines; providing coverage of prevented planting as one of the perils encompassed by the standard FCIC policy; allowing a limited new period with appropriate conditions for enrolling in crop insurance; and implementing the standby disaster assistance program in the 1990 farm bill if the crop insurance actions are not taken or to the extent that crop insurance coverage is inadequate to alleviate the economic emergency facing farmers.

These steps have not been taken and I see no indication that the administration is planning to do so. That is regrettable, since such actions could be taken quickly and would most likely be less costly than other means of disaster assistance. My suggestions would also help to strengthen the crop insurance program while helping farmers deal with disaster conditions.

The Department of Agriculture has designated 76 Iowa counties as disaster counties or contiguous to disaster counties. From the standpoint of assistance, the principal significance of that designation is that farmers in those counties may apply for FmHA emergency disaster loans. Unfortunately, the help that such loans will provide is very limited. Eligibility for the loans is determined on a case-by-case basis, so not all affected farmers will be able to obtain loans. In fact, farmers who have been hit the worst may not qualify because their repayment ability may be doubtful. For those who do qualify, the amount of the loan is by no means generous. Moreover, farmers who are already financially strapped can ill-afford to

take on more debt. They need some help in replacing income.

The offering of FmHA disaster loans is in reality the bare minimum that the Department of Agriculture could offer in these circumstances to farm families devastated by natural disaster. Because of the critical need for disaster assistance, and in light of USDA's grudging approach thus far to providing assistance, it is essential for Congress to move ahead with disaster assistance legislation. Some will say that there is no money in the Federal budget to cover disaster assistance; that despite the human tragedy and devastation, we simply can do no more. That seems to be the attitude behind the administration response so far to the situation. I reject this assertion. Farm families and rural communities in Iowa and elsewhere are facing desperate financial situations, and in a budget of nearly a trillion and a half dollars, surely enough can be found to help address such pressing needs.

The principal provisions of this legislation, which is based largely upon the successful Disaster Assistance Act of 1988, are as follows:

Crop loss benefits: Provides disaster benefits to producers of all commercial crops, including program crops, nonprogram crops and soybeans, who suffer crop losses in excess of 35 percent of the program payment yield, county yield or normal yield in 1990 or 1991 due to damaging weather—defined to include drought, hail, excessive moisture, freeze, tornado, hurricane, earthquake or excessive wind—or related condition.

Benefits on losses between 35 and 75 percent: Disaster payments on wheat, feedgrains, cotton, and rice are paid at the rate of 65 percent of the target price level for producers who participated in the commodity program. For those who did not participate in the program the payment would be 65 percent of the county loan rate on the commodity. For soybeans and other nonprogram crops, disaster payment will be made at a rate of 65 percent of the average producer market price for the last 5 years, excluding the high and low years. For peanuts, sugar beets, sugarcane, and tobacco, payments will be made at the rate of 65 percent of the 1989 support price level.

Benefits on losses over 75 percent: Disaster payments on the portion of the production loss in excess of 75 percent will be paid at a rate of 90 percent of the target price, support price, average price or loan rate, as applicable.

Crop quality reduction payments: The bill provides additional payments up to 10 percent of the applicable payment rate to compensate for the reduced quality of the crop actually harvested due to adverse weather or related conditions.

Repayment of advance deficiency payments: No repayment of advance deficiency payments will be required on that part of production losses up to 35 percent. For losses above 35 percent, producers may not receive both a deficiency payment and a disaster payment. However, producers would not be required to repay advance deficiency payments prior to December 31, 1992.

Federal crop insurance payments and future year coverage: For an individual producer, the combined crop insurance benefits and disaster payments may not exceed 100 percent of the yield used for calculating disaster payments, or the crop insurance yield if it is greater, times the acreage for the crop planted or prevented from being planted times the target price, support price, average price or loan rate, as applicable.

Producers accepting disaster payments or the guarantee of advance deficiency payments would be required to purchase crop insurance for the 1992 and 1993 crop years with the following exceptions: First, if crop insurance coverage is not available, second, if the producer's annual premium rate is greater than 125 percent of the average premium rate for the 1990 crop, third, if the producer's annual premium rate is greater than 25 percent of the disaster benefits received, fourth, if on appeal, the county committee determines that the purchase of crop insurance would impose an undue financial hardship on the producer, or fifth, if the payment or guarantee is for a loss from prevented planting, unless FCIC offers the same coverage in terms of yields and prices for prevented planting as it does for other perils in its standard policy.

Payment limitations: Total benefits to a producer for crop losses are limited to $100,000. The combined benefits to a producer for crop losses and emergency livestock assistance may not exceed $100,000. Producers may not receive both disaster payments and emergency livestock assistance based on the same crop loss.

Oilseeds planted on 0/92, 50/92 and prevented planting acres: For 1991, in counties declared to be disaster counties—and in contiguous counties—acreage prevented from being planted to program crops may be enrolled in the 0/92 or 50/92 programs and soybeans or other nonprogram crops may be planted on acreage otherwise required to be devoted to conserving uses. The bills would also reverse the current USDA rule that prohibits placing under price support loan soybeans and other oilseeds grown on intended program crop acreage for which prevented planting is credit.

Emergency Forage Program: The bill provides a 50-percent cost share program for reseeding of established pasture land damaged in 1990 or 1991 in order to provide grazing and haying in late fall 1991 and early spring 1992. An owner or operator of pasture land may receive as much as $3,500 in payments under the program.

Farm operating loans: The bill directs USDA to provide operating loans to the maximum extent possible to farmers suffering major losses due to damaging weather or related condition and to provide guarantees for loans to refinance and reamortize 1990 or 1991 operating loans or installments on loans due in 1991 or 1992.

Assistance for rural businesses: USDA is directed to provide guarantees for loans, and restructuring and refinancing of loans, to businesses in rural areas to alleviate distress from damaging weather or related condition. Up to $200 million is to be available in the program, with individual guarantees of up to $500,000.

Mr. President, I urge my colleagues to support this urgently needed legislation.

By Mr. DODD (for himself, Mr. RIEGLE, Mr. D'AMATO, Mr. SANFORD, Mr. WIRTH, Mr. BRYAN, Mr. BOND, Ms. MIKULSKI, and Mr. SIMON):

S. 1423. A bill to amend the Securities Exchange Act of 1934 with respect to limited partnership rollups; to the Committee on Banking, Housing, and Urban Affairs.

LIMITED PARTNERSHIP ROLLUP REFORM ACT

Mr. DODD. Mr. President, today I am introducing legislation designed to address the widespread investor losses and abuses that have arisen in the $130 billion market for publicly held limited partnerships. I am joined in introducing the legislation by Chairman RIEGLE and a number of our colleagues.

This legislation would: First, require complete and understandable disclosure to limited partnership investors solicited in rollup transactions; second, give investors the tools to communicate with other limited partnership investors, in order to mount opposition to abusive rollup proposals; third, give investors more time to consider complicated transactions and fully understand the risks; fourth, remove the current incentives for brokers and market professionals to pressure investors to vote in favor of rollups that may not be in their interests; and fifth, provide alternatives for investors faced with rollups, so they are not forced into transactions against their wishes.

According to industry data, out of 11 million U.S. investors in these partnerships, an estimated 8 million are small investors, with an average investment of $10,000. As small as this might sound, for many of these individuals this may represent the bulk of their savings. Yet many have seen the value of their investments drop by half or more, while partnership sponsors and market professionals have reaped millions of dollars in fees by taking separate limited partnerships and rolling them up into new entities. In abusive partnership rollup transactions, the risks have not been fully disclosed, investors have felt

pressured to vote for transactions they did not fully understand, and the proxy rules of the Securities and Exchange Commission have been stacked against them.

When they invested in the original limited partnerships, none of these investors believed they were getting a risk-free return—but promises were made to them. First, they were told that they would receive distributions from their partnership investment on a yearly or periodic basis, and that in a certain period of time—usually 8 to 10 years—all of the property bought by the partnership would be sold. At that time, it was promised that the investors, the limited partners, would receive proceeds from the sale of the remaining property and other assets.

They also were assured that the general partners had a great incentive to look out for the interests of the limited partner investors, because, except for their management fees, the general partners could not take any profits out of the partnerships until the limited partners received their share. That, at least, was the way the original deals were structured.

But the assets of many partnerships, especially those invested in real estate, have declined in value in recent years. Sponsoring organizations and general partners have been unable to sell new partnerships; their fee bases have shrunk; and their prospects for taking a profit after paying off the limited partners has declined substantially. Limited partner investors have found that the original deals are being changed. Many general partners have attempted to "roll up" existing limited partnerships into new entities and, in doing so, have deprived investors of their original rights under the partnership agreement.

In testimony before the Securities Subcommittee, as well as in many letters to the subcommittee from individuals around the country, investors have told disturbing stories about abuses in these rollup transactions. Investors in more than 30 States have written to me, saying that they have been confused by 200- and 300-page proxy statements. They have felt pressured to vote "yes" for the roll-ups. And, even if they vote "no" they are being forced into investments they had no intention of being in, because other investors did not fully understand the risks and voted for the rollups.

At our February hearing, Margaret Hooker, a limited partnership investor from Connecticut who "was saving on a long term basis," told us about a 45-percent loss on her limited partnership investment, which was subject to a rollup transaction.

Another witness at our February hearing, Ronald Rybicki of Detroit, said he made a $20,000 investment in what he felt was "the most comprehensive and conservative limited partnership" he could find. However, after 4 years, Mr. Rybicki's limited partnership was rolled up with other partnerships. He told the subcommittee, "Most of the original goals of the program were changed.* * * (there were) huge unjustified increases in management expenses * * * (and) certain votes would require 75-percent shareholder approval." As a result of the rollup, after 1 day of trading, Mr. Rybicki realized a 75-percent loss on "hard-earned money earmarked for retirement".

Another investor from Connecticut wrote, "As a teacher, this investment was an important part of my savings for retirement * * * even though I voted no, I had no say or influence in determining the outcome of my investment * * * I feel caught in a system in which I have no recourse." Another Connecticut investor wrote, "On January 21, 1991, I found that my $25,000 was now worth $6,300. I have since learned that management is enjoying an annual compensation * * * of $1 million and wiped out $3.4 million of accumulated investors priority (interests)."

It became clear to me that these abuses need to be addressed. Over the past 3 months, I have worked with Chairman RIEGLE and my other colleagues, as well as with investor representatives and others, in developing the legislation we are introducing today.

Just 2 weeks ago, the Securities and Exchange Commission proposed a series of rules that would require greater disclosure in rollups, improve the proxy process, and address other abuses in rollups. These rules, if adopted, fully implemented and vigorously enforced, would accomplish many of the objectives of this legislation.

It is imperative that the SEC move forward quickly to adopt these rules in final form. Nonetheless, I am not assured that these rules will provide the full extent of protections needed for investors subject to rollups. Therefore, I am writing the SEC to urge it to move forward quickly to adopt final rules, and have further asked the agency to address those parts of the legislation not covered by the proposed rules and advises the Congress whether, in the absence of further action, investors in limited partnerships will be fully protected.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD.

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

S. 1423

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 "Limited Partnership Rollup Reform Act of 1991".

SEC. 2. REVISION OF PROXY SOLICITATION RULES WITH RESPECT TO PARTNERSHIP ROLLUP TRANSACTIONS.

(a) AMENDMENT.—Section 14 of the Securities and Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end thereof the following new subsection:

"(h) PROXY SOLICITATIONS AND TENDER OFFERS IN CONNECTION WITH PARTNERSHIP ROLLUPS.—

"(1) PROXY RULES TO CONTAIN SPECIAL PROVISIONS.—It shall be unlawful for any person to solicit any proxy, consent, or authorization concerning a partnership rollup transaction, or to make any tender offer in furtherance of a partnership rollup transaction, unless such transaction is conducted in accordance with rules prescribed by the Commission under this subsection. Such rules shall—

"(A) permit—

"(i) any holder of a security that is the subject of the proposed partnership rollup transaction to engage in preliminary communications for the purposes of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed transaction, and

"(ii) any registered broker-dealer who is not compensated for soliciting proxies, consents, or authorizations with respect to the proposed transaction to engage in communications with its employees and customers for the purpose of expressing an opinion or giving a recommendation with respect to a proposed transaction, without regard to whether any such communication would otherwise be considered a solicitation of proxies, and without being required to file soliciting material with the Commission prior to making that determination,

but nothing in this subparagraph shall be construed to limit the application of any provision of this title prohibiting, or reasonably designed to prevent, fraudulent, deceptive, or manipulative acts or practices under this title;

"(B) prohibit compensating any person soliciting proxies, consents, or authorizations directly from security holders concerning such a transaction—

"(i) on the basis of whether the solicited proxies, consents, or authorizations either approve or disapprove the proposed transaction; or

"(ii) contingent on the transaction's approval, disapproval, or completion;

"(C) require the issuer to provide to any holder of the securities that are the subject of the transaction a list of the holders of record of such securities in such form and subject to such terms and conditions as the Commission may determine, except that the Commission may provide, by rule or order, for (i) deletions from such list as necessary to protect legitimate security holder requests for confidentiality, and (ii) forwarding communications to such security holders (requesting confidentiality) and to the beneficial owners of securities held by a nominee, trustee, or custodian;

"(D) provide that any soliciting material distributed in connection with a partnership rollup transaction—

"(i) be clear, concise, and understandable and contain appropriate captions or headings;

"(ii) contain a clear, concise, understandable, and prominent risk disclosure in the forefront of the prospectus summary, including—

"(I) any changes in the business plan, voting rights, form of ownership interest or management compensation in the proposed

partnership rollup transaction from the original limited partnership;

"(II) the conflicts of interest, if any, of the general partner; and

"(III) the projected price performance based upon the relationship between exchange values and trading values;

"(iii) contain a clear, concise, and understandable comparison, and if appropriate, a side-by-side comparison, of each original partnership and proposed partnership rollup transaction, including—

"(I) the business plan and investment philosophy;

"(II) cash distribution policies, including disclosure of management fees and other forms of compensation to general partners and affiliates, and dividend and reinvestment policies;

"(III) voting rights and governance provisions;

"(IV) general partner and limited partners' respective ownership interests; and

"(V) such other issues as the Commission determines to be material to informed consideration of partnership rollup transactions;

"(iv) contain a clear, concise, and understandable summary of—

"(I) the proposed partnership rollup transaction and its material consequences for investors;

"(II) any conflicts of interest required to be disclosed in the soliciting material;

"(III) any changes in voting rights that will result from the transaction;

"(IV) any changes in the form of ownership interest, management compensation, and their consequences;

"(V) the effects of the partnership rollup transaction on investors in each limited partnership involved in the transaction;

"(VI) the method used to determine the value of limited partners' interests to be exchanged for the securities in the partnership rollup transaction;

"(VII) management's evaluation, if any, of alternatives to the partnership rollup transaction, such as liquidation;

"(VIII) whether the management has concluded that the proposed rollup transaction is fair to each class of security holders, and a discussion of the basis for that conclusion;

"(IX) any provisions for dissenting shareholders to exercise appraisal or other rights;

"(X) the performance of comparable partnership rollup transactions that have been completed and are listed on a national securities exchange or in the national market system, including the—

"(aa) price performance over a period of time;

"(bb) return on investment to limited partners; and

"(cc) trading value of the security immediately following the partnership rollup transaction in contrast to appraisal and exchange values of the security; and

"(XI) such other matters or risks as the Commission determines to be necessary or appropriate to facilitate informed consideration of partnership rollup transactions;

"(E) provide that the soliciting material describe in reasonable detail any opinion, appraisal, or report that is prepared by a person, unaffiliated with the general partner or sponsor and received by the entity subject to the transaction or its affiliates and that is related to the proposed transaction, a copy of which shall be required to be filed with the Commission, which description shall include—

"(i) the identity and qualifications of the person who has prepared any opinion, appraisal or report;

"(ii) the method of selection of such party and any past, existing or contemplated material relationships between the party, or any of its affiliates and the entity requesting or receiving the opinion, appraisal, or report;

"(iii) the material terms of the engagement, including compensation arrangements and access to the books and records of the entities subject to a partnership rollup transaction;

"(iv) the basis for rendering and methods used in developing the opinion, appraisal, or report;

"(v) a statement of whether the party has, in connection with a rollup transaction (I) undertaken an analysis of the fairness of the proposed rollup transaction to each class of security holders and an independent investigation of the underlying facts, and (II) arrived at an independent valuation of the transaction or relied solely upon information provided by the entities subject to the transaction or their affiliates;

"(vi) the procedures followed and the bases for any findings and conclusions reached in connection with any such analysis, investigation or valuation; and

"(vii) other such information as the Commission determines to be necessary or appropriate to facilitate informed consideration of partnership rollup transactions;

"(F) provide that any opinion, appraisal, or report referred to in subparagraph (E) shall be prepared by an unaffiliated person—

"(i) who is independent of the person or persons proposing the rollup transaction;

"(ii) who does not receive any compensation contingent on the transaction's approval or completion;

"(iii) who has been given access by the issuer to all of the books, records, and premises of—

"(I) the sponsor of such partnership rollup transaction,

"(II) the entity that is proposed to be rolled up, and

"(III) the entity into which the partnership is to be rolled up, if such entity is already in existence, or appropriate financial statements for the resulting entity if the entity is not already in existence,

to the extent in each instance that such books, records, and premises are relevant to the proposed transaction; and

"(iv) who has undertaken an independent analysis of the fairness of the proposed rollup transaction to security holders based upon the information obtained through such access and upon other independently obtained information; and

"(G) provide that any solicitation or offering period with respect to any proxy solicitation or tender offer in a partnership rollup transaction shall be for not less than 60 days or such longer period as the Commission by rule or order may prescribe; and

"(H) contain such other provisions as the Commission determines to be necessary or appropriate for the protection of investors in partnership rollup transactions.

"(2) EXEMPTIONS.—The Commission may, consistent with the public interest, the protection of investors, and the purposes of this Act, exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the requirements imposed pursuant to paragraph (1) or, from the definition contained in paragraph (4)(A).

"(3) EFFECT ON COMMISSION AUTHORITY.—Nothing in this subsection limits the authority of the Commission under subsection (a) or (d) of this section or any other provision of this title or precludes the Commission from imposing, under any other such provision, a remedy or procedure required to be imposed under this subsection.

"(4) DEFINITIONS.—As used in this subsection—

"(A) The term 'partnership rollup transaction' means a transaction involving the combination or reorganization of one or more limited partnerships, directly, indirectly, or through a series of transactions, where some or all investors in one or more of the partnerships receive new securities or securities in another entity. Such term does not include a transaction—

"(i) involving only securities reported under a transaction plan declared effective before January 1, 1991, by the Commission under section 11A of this title;

"(ii) involving only issuers that are not required to register or report under section 12 of this title both, before and after the transaction; or

"(iii) involving the reorganization of a single limited partnership if, as a consequence of the proposed transaction, there will be no significant adverse change to security holders in voting rights, the term of existence of the entity, management compensation, or investment objectives.

"(B) The term 'partnership' means—

"(i) a limited partnership, or

"(ii) a successor entity to one or more limited partnerships, which was formed after January 1, 1991.".

(b) SCHEDULE FOR REGULATIONS.—The Securities and Exchange Commission shall, within 9 months after the date of enactment of this Act, publish proposed regulations, and, within 18 months after such date of enactment, prescribe final regulations, to implement the requirements of section 14(h) of the Securities Exchange Act of 1934.

SEC. 3. RULES OF FAIR PRACTICE IN ROLLUP TRANSACTIONS.

(a) REGISTERED SECURITIES ASSOCIATION RULES.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the end thereof the following new paragraph:

"(12) The rules of the association to promote just and equitable principles of trade, as required by paragraph (6) of this subsection, include rules to prevent members of the association from participating in any partnership rollup transaction (as such term is defined in section 14(h)(4) of this title) unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to either or both of the following:

"(i) an appraisal and compensation or to retain a security under the same terms and conditions as the original issue, or

"(ii) other comparable rights designed to protect limited partners, including, when the association determines it to be necessary to protect such rights, the use of an independent committee of limited partners unaffiliated with the general partner or sponsor which will act to protect the interests of limited partners;

"(B) the right not to have their voting power unfairly reduced or abridged;

"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(D) restrictions on the conversion of management profit-sharing interests and incentive fees into asset-based management fees.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that

is the subject of a partnership rollup transaction who casts a vote against the transaction and affirmatively exercises the rights available under this paragraph, except that for purposes of an exchange or tender offer such term means any person who files an objection in writing under the rules of the association during the period in which the offer is outstanding.".

(b) LISTING STANDARDS OF NATIONAL SECURITIES EXCHANGES.—Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end thereof the following:

"(9) The rules of the exchange prohibit the listing of any security resulting from a partnership rollup transaction (as such term is defined in section 14(h)(4) of this title), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to either or both of the following:

"(i) an appraisal and compensation or to retain a security under the same terms and conditions as the original issue, or

"(ii) other comparable rights designed to protect limited partners, including, when the exchange determines it to be necessary to protect such rights, the use of an independent committee of limited partners unaffiliated with the general partner or sponsor which will act to protect the interests of dissenting limited partners;

"(B) the right not to have their voting power unfairly reduced or abridged;

"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(D) restrictions on the conversion of management profit-sharing interests and incentive fees into asset-based management fees.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that is the subject of a partnership transaction who casts a vote against the transaction and affirmatively exercises the rights available under this paragraph, except that for purposes of an exchange or tender offer such term means any person who files an objection in writing under the rules of the exchange during the period in which the offer is outstanding.".

(c) DESIGNATION OF NATIONAL MARKET SYSTEM SECURITIES.—Section 11A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1(a)) is amended by adding at the end thereof the following new paragraph:

"(4) The rules of the Commission under paragraph (2) designating qualified securities shall prohibit the designation for trading in the national market system of any security resulting from a partnership rollup transaction (as such term is defined in section 14(h)(4) of this title), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

"(A) the right of dissenting limited partners to either or both of the following:

"(i) an appraisal and compensation or to retain a security under the same terms and conditions as the original issue, or

"(ii) other comparable rights designed to protect limited partners, including, when the association determines it to be necessary to protect such rights, the use of an independent committee of limited partners unaffiliated with the general partner or sponsor which will act to protect the interests of dissenting limited partners;

"(B) the right not to have their voting power unfairly reduced or abridged;

"(C) the right not to bear an unfair portion of the costs of a proposed rollup transaction that is rejected; and

"(D) restrictions on the conversion of management profit-sharing interests and incentive fees into asset-based management fees.

As used in this paragraph, the term 'dissenting limited partner' means a holder of a beneficial interest in a limited partnership that is the subject of a partnership transaction who casts a vote against the transaction and affirmatively exercises the rights available under this paragraph, except that for purposes of an exchange or tender offer such term means any person who files an objection in writing under the rules of the association during the period in which the offer is outstanding.".

(d) EFFECT ON EXISTING AUTHORITY.—The amendments made by this section shall not limit the authority of the Commission, a registered securities association, or a national securities exchange under any provision of the Securities Exchange Act of 1934 or preclude the Commission or such association or exchange from imposing, under any other such provision, a remedy or procedure required to be imposed under such amendments.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS OF THE LIMITED PARTNERSHIP ROLLUP REFORM ACT OF 1991

SECTION 1. SHORT TITLE

This section sets forth the short title of the Act, the "Limited Partnership Rollup Reform Act of 1991."

SECTION 2. REVISION OF PROXY SOLICITATION RULES AND DISCLOSURE WITH RESPECT TO PARTNERSHIP ROLLUP TRANSACTIONS

Adds a new Section 14(h) to the Securities and Exchange Act of 1934 to require special proxy solicitation and tender offer rules to be adopted in connection with limited partnership rollups.

Communications Among Securityholders.—The new rules would permit holders of shares in the proposed limited partnership rollup to engage in preliminary communications with other limited partners, for the purpose of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed transaction, prior to the transaction date, and permit any registered broker dealer who is not compensated for soliciting proxies, consents, or authorizations with respect to the proposed transaction to engage in communications with its employees and customers for the purpose of expressing an opinion or giving a recommendation with respect to the proposed transaction (1) without regard as to whether such action is in violation of proxy solicitation rules, and (2) without first having to file soliciting material with the Securities and Exchange Commission (SEC) prior to making that determination. Fraudulent, deceptive or manipulative acts or practices, however, are not protected under this subsection.

Under current proxy rules, limited partners are allowed to engage in preliminary communications with up to 10 limited partners, without having to file soliciting material with the SEC. Given the complicated nature of these transactions and the lack of information available to limited partners concerning the pending rollup transaction, investors have sought to communicate with other investors about proposed rollup transactions. Limited partners attempting to communicate with fellow limited partners have found themselves in violation of proxy solicitation rules. This section would clarify that limited partners would have the ability to communicate with each other without being in violation of proxy solicitation rules.

Limitations on Soliciting Broker-Dealers.—This section would also clarify that any registered broker dealer who is not compensated for soliciting proxies with respect to the proposed transaction would be allowed to communicate with its clients or employees without violating proxy solicitation rules. This would avoid any conflict of interest that might arise between the broker and the client investor if the broker dealer were being compensated for a related proxy solicitation.

The new rules also would prohibit the compensation of any person soliciting proxies, consents, or authorizations from securities holders concerning such a transaction: (1) on the basis of whether the solicited proxies, consents, or authorizations either approve or disapprove the proposed transaction; or (2) if such compensation is contingent on the transaction's approval, disapproval, or completion.

This section would address the conflict of interest that arises if a person is soliciting proxies and being compensated for the delivery of a specific outcome. Currently, a conflict of interest arises in partnership rollup transactions when a solicitor's compensation is based on the delivery of a "yes" vote (a vote that approves the transaction) or the outcome of the transaction. This section would address this conflict of interest.

Security Lists.—The rules would require the issuer to provide any limited partner involved in a rollup transaction a list of names of all limited partners and general partners involved in the proposed transaction, except where the SEC determines that deletions from such list are necessary to: (1) protect the confidentiality of certain limited partners, and (2) to protect the confidentiality of the names of beneficial owners held in street name. This would allow investors to contact other limited partners in order to communicate concerns related to the proposed partnership rollup transaction.

Full and Fair Disclosure.—The new rules would require greater disclosure to investors, by requiring that the rollup soliciting material be written in a manner understandable to the everyday investor. The prospectus must be clear, concise and understandable, contain appropriate captions or headings and include:

(1) a prominent risk disclosure in the forefront of the prospectus summary highlighting any changes in the business paln, voting rights, form of ownership interest or management compensation, general partner's conflicts of interest, and projected price performance based upon the relationship between exchange values and trading values;

(2) a concise and understandable comparison, and where appropriate, a side-by-side comparison, of each original partnership and proposed rollup comparing the business plan and investment philosophy, cash distribution policies, voting rights and governance provisions, and general partner and limited partners' respective ownership interests; and

(3) a summary discussing the effects of the proposed transaction, including any conflicts of interest, any changes in voting rights, any changes in the form of ownership interest or management compensation, the valuation method used to determine the value of limited partners' interests, any provisions providing for "dissenters' rights", and the gen-

eral partners' evaluation of alternatives to the transaction, such as liquidation, including whether management has determined that the proposed transaction is fair to each limited partner and the basis for such conclusion.

The prospectus must also clearly discuss the performance of partnership rollup transactions that have been completed and are listed on a national securities exchange or in the national market system, including price performance, return on investment to limited partners, and actual initial trading value of a partnership rollup transaction in contrast to appraisal and exchange values.

Appraisals.—The rule would require that the soliciting material describe in reasonable detail any opinion, appraisal or report related to the proposed transaction that is prepared by a person unaffiliated with the general partner or sponsor, and received by the entity subject to the transaction or its affiliates that are related to the proposed transaction. A copy of the opinion, appraisal or report shall be required to be filed with the SEC. The description shall include but not be limited to:

(1) the identity and qualifications of the unaffiliated person who has prepared the opinion, appraisal or report;

(2) the method of selecting such person, and any past, existing or contemplated material relationships between the person, or any of its affiliates and the person requesting or receiving the opinion, appraisal or report;

(3) the material terms of the engagement, including but not limited to compensation arrangements and access to the books and records of the entities subject to a partnership rollup transaction;

(4) the basis for rendering and methods used in developing the report, opinion or appraisal;

(5) a statement whether the person has (1) undertaken in connection with a rollup transaction, an analysis of the fairness of the proposed rollup transaction to each class of security holders and an independent investigation of the underlying facts and (2) arrived at an independent valuation of the transaction or relied solely upon information provided by the entities subject to the transaction of their affiliates: and

(6) the procedures followed and the bases for any findings and conclusions reached in connection with any such analysis, investigation or valuation.

The rules would also require that any opinion, appraisal or report related to the proposed transaction shall be prepared by an unaffiliated person who: (1) is independent of the persons proposing the rollup transaction; (2) does not receive any compensation that is contingent on the transaction's approval or completion; and (3) has been given access by the issuer to any and all books, records, and premises of the sponsor or sponsors of the partnership rollup transaction, the entity that is proposed to be rolled up, and the entity into which the partnership is to be rolled up (if such entity is already in existence) to the extent that such books, records, and premises are relevant to the proposed transactions.

Minimum Offering Period.—The rules also would provide for a larger minimum offering period, by requiring that all shareholders have at least sixty days to review a prospectus. In the event that changes are made to the original prospectus, the review period shall be extended as determined by the SEC. The complex nature of rollup transactions have led to prospectuses that are lengthy and complicated. Given the lack of institutional investment in limited partnerships, there is also the absence of institutional review and analysis of partnership rollup transactions. Therefore, the overwhelming majority of those invested in limited partnerships are individual investors, and there is the need to extend the period of review of the transaction prospectus to allow limited partners to analyze the proposal, communicate concerns, and offer alternatives.

Exemptions.—New section 14(h)(2) would give the SEC the authority, at any time after the date of enactment, to exempt by rule or order certain securities, transactions and persons or classes of persons from the requirements imposed pursuant to paragraph 1, the proxy solicitation rules in connection with partnership rollups, and paragraph 4, the definition of partnership rollup transaction, consistent with the public interest, the protection of investors, and the purposes of this Act. With this exemptive authority, the SEC should allow those partnership rollup transactions that are fully disclosed to proceed while the rules and regulations are being promulgated.

Effect on Commission Authority.—New section 14(h)(3), states that nothing in the bill shall be construed to limit the SEC's authority under any other provision of the securities laws or to preclude the SEC from imposing, under any such other provision, a remedy or procedure required to be imposed under this subsection.

Definition.—Section 14(h)(4) defines the term 'partnership rollup transaction' to be a transaction involving the combination or reorganization of one or more limited partnerships, either directly, indirectly, or through a series of transactions, where some or all investors in one or more of the partnerships or partnerships receive new securities or securities in another entity.

The term 'partnership rollup transaction' does not apply to: (1) a transaction involving seasoned, publicly traded securities that report under a transaction plan declared effective before January 1, 1991 (this would include securities that trade on the New York Stock Exchange, American Stock Exchange, and NASDAQ/National Market System); (2) any transaction involving privately owned limited partnerships (not required to register with the SEC) which generally involve a limited number of sophisticated investors and will not trade on public markets; and (3) a transaction involving the reorganization of a single limited partnership, if as a consequence of the proposed transaction, there will be no significant adverse change to securities holders' in voting rights, the life of the entity, management compensation or investment objectives.

This section also defined the term 'partnership' to mean (1) a limited partnership, or (2) a successor entity to one or more limited partnerships which was formed after January 1, 1991.

Schedule for Regulations.—This section requires that the SEC shall publish proposed regulation to rollup transaction within 9 months of the enactment date, and prescribe final regulations within 18 months of the enactment date of this Bill.

SECTION 3. RULES OF FAIR PRACTICE AND LISTING STANDARDS IN ROLLUP TRANSACTIONS.

Registered Securities Association Rules.—This section amends Section 15A(b) of the Securities Exchange Act of 1934 to require that the rules of a national securities association promote just and equitable principles of trade and prevent members of the association from participating in any rollup transaction that does not protect the rights of limited partners.

These protections shall include the right of dissenting limited partners to receive either or both of the following: (1) an appraisal and compensation or to retain a security under the same terms and conditions as the original issue, or (2) other comparable rights designed to protect limited partners, including, when the association determines it to be necessary to the protection of such rights, the use of an independent committee of limited partners unaffiliated with the general partner or sponsor which will act to protect the interests of limited partners.

The structure of the independent committee of limited partners would be similar to the structure of a bondholders bankruptcy committee. Any limited partner, unaffiliated with the general partner or partnership rollup sponsor, would be allowed to serve on such committee. The independent committee would have the authority to hire independent advisors to work with the general partner or sponsor and negotiate on behalf of the limited partners in structuring the transaction. The independent committee would have the authority to make recommendations to the limited partners regarding the proposed transaction. However, the independent committee would not have any binding authority on the vote of the limited partners.

Protections afforded limited partners under this section also include: (1) the right not to have their voting power unfairly reduced or abridged; (2) the right not to bear an unfair portion of the costs of a rejected rollup transaction; and (3) restrictions on the conversion of management profit-sharing interests and incentive fees into asset management fees.

This provision defines the term 'dissenting limited partner' as a holder of a benefical interest in a limited partnership that is the subject of a partnership transaction who casts a vote against the transaction and affirmatively exercises the rights available under this paragraph. For the purpose of an exchange or tender offer such term is defined as any person who files an objection to the transaction in writing.

Listing Standards of National Securities Exchanges.—This section amends Section 6(b) of the Securities Exchange Act of 1934 to prohibit an exchange from listing any securities resulting from a rollup transaction unless such transaction protects the rights of limited partners.

These rights include the right of dissenting limited partners to receive either or both of the following: (1) an appraisal and compensation or to retain a security under the same terms and conditions as the original issue, or (2) other comparable rights designed to protect limited partners, including, when the association determines it to be necessary to the protection of such rights, the use of an independent committee of limited partners unaffiliated with the general partner or sponsor which will act to protect the interests of limited partners.

These rights also include: (1) the right not to have their voting power unfairly reduced or abridged; (2) the right not to bear an unfair portion of the costs of a rejected rollup transaction; and (3) restrictions on the conversion of management profit-sharing interests and incentive fees into asset management fees.

The term 'dissenting limited partner' is defined as a holder of a beneficial interest in a limited partnership that is the subject of a

partnership transaction who casts a vote against the transaction and affirmatively exercises the rights available under this paragraph. For the purposes of an exchange or tender offer such term is defined as any person who files an objection to the transaction in writing.

Designation of National Market System Securities.—This section amends Section 11A(a) of the Securities Exchange Act of 1934 to prohibit any national market system from trading any security resulting from a rollup transaction unless such transaction contains protection for limited partners similar to the protections provided for exchange listed securities above.

Effect on Existing Authority.—The amendments made by this section shall not limit or preclude the authority of the SEC, a registered securities association, or national securities exchange under the Securities and Exchange Act of 1934 from imposing, under any other such provision, a remedy or procedure required to be imposed under such amendments.

Effective Date.—The amendments of this section shall take effect 18 months after the date of enactment of this Act.

• Mr. RIEGLE. Mr. President, I am pleased to be a cosponsor of the Limited Partnership Rollup Reform Act of 1991. I believe Government action is needed to prevent abuses of limited partners, who place both their money and their fiduciary trust with general partners. It seems clear that at least in some of the limited partnership reorganizations—referred to as "rollups"—that have occurred to date, public limited partners have been the victims of unfair practices by general partners. This legislation is intended to put a stop to this abuse.

The strength of the U.S. capital markets rests upon investor confidence in the integrity of the market. I know that Senator DODD, chairman of the Securities Subcommittee of the Senate Banking Committee, believes as strongly as I do that we must insure that all aspects of the capital markets are fair in order to instill the trust necessary for individual investors to place their hard-earned money in these markets.

I want to commend Senator DODD for his diligent work on this issue. For well over a year, staff of the Securities Subcommittee has been meeting with the Securities and Exchange Commission to determine what steps should be taken to prevent abuses in limited partnership rollups. In February this year, the Securities Subcommittee held a hearing on this issue, at which Mr. Ron Rybicki, a Michigan resident, testified as to his personal experience as a limited partner whose investment was "rollup." Mr. Rybicki, as well as other witnesses that day, detailed abuses that we cannot allow to continue. The almost 8 million limited partners in this country, over 300,000 of whom live in Michigan, need to be protected from unfair rollups.

Since that hearing, Senator DODD has continued his efforts to prod the SEC to take action on this issue while simultaneously working on proposed legislation. To date, both of these efforts have been successful. The SEC has published proposed regulations on rollups that, if vigorously implemented, would go a long way to preventing abuses of limited partners in rollup transactions. I am pleased to be a cosponsor of the Limited Partnership Rollup Reform Act of 1991.•

By Mr. CONRAD (for himself and Mr. BURDICK):

S. 1424. A bill to amend chapter 17 of title 38, United States Code, to require the Secretary of Veterans Affairs to conduct a mobile health care clinic program for furnishing health care to veterans located in rural areas in the United States; to the Committee on Veterans Affairs.

DVA MOBILE HEALTH CARE CLINIC ACT

• Mr. CONRAD. Mr. President, the bill I am introducing today would require the Department of Veterans Affairs to establish a permanent mobile health care clinic program to provide health care assistance to veterans living in rural areas of the country.

At present, the Department of Veterans Affairs has plans to operate mobile health care clinics in only a handful of the States that have large numbers of rural veterans. The Department maintains that existing programs can meet the needs of rural veterans for medical care. But a lot has changed since the decision about these programs was made. This country fought a war, and now has about 540,000 more veterans. Many thousands of them are returning home to rural areas, far away from the nearest veterans' health care facility.

In North Dakota, for example, over 34,000 people—more than 50 percent of the States' veterans—live in counties 100 miles or more from the Fargo DVA Medical Center, the only DVA health care facility in the entire State. More than 15,000 of these veterans live in counties in the western and northern part of the State, places that DVA has designated as medically underserved areas. Because of where these veterans live, as well as the limitations on DVA funding to open new medical facilities or clinics, many are not receiving the benefits of health care to which they are entitled at a Department of Veterans Affairs medical facility.

Mr. President, the Department of Veterans Affairs should look at the implications of its statistics. The majority of veterans may live within a 100-mile radius of the nearest DVA health care facility, but that facility does not consistently meet their needs for health care. The further away veterans live from a DVA health care facility, the less likely they are to travel great distances for routine health care.

According to a Department of Veterans Affairs report in 1986 entitled "Study of Health Care Services to Veterans Living in Geographically Remote Areas," more than 131,000 veterans live in counties that are 2 hours from the nearest DVA health care facility. How many of these veterans forgo checkups and preventive care because of the inconvenience of driving such distances? How often do they suffer serious illness that might have been checked and cured at an earlier stage?

The legislation that I am introducing today would respond to the health care concerns of rural veterans by authorizing the Department of Veterans Affairs to establish mobile health care clinics in those States with a significant population of veterans living in areas at least 100 miles away from the nearest DVA health care facility. At present, the Department of Affairs has identified 30 States in this category.

Under my bill, $45 million would be authorized over a 5-year period for the mobile health care clinic program. Beginning with an annual appropriation of $3 million in fiscal year 1992, and increasing to $15 million in fiscal year 1997, this funding would support the development of five new clinics annually, as well as the maintenance of all health care clinics in operation from previous years. Over the 5-year period, the authorization should support, at an estimated cost of $600,000 per mobile clinic annually, mobile clinics in 25 States with significant rural veteran populations.

Mr. President, I understand that Congress in 1988 approved the Veterans' Benefits and Services Act—Pub. L. 100-322—which authorized the Department of Veterans Affairs to establish a 2-year pilot mobile health care program to serve rural veterans. Specifically, the law authorized the operation of at least two mobile health care clinics in each of the four regions: the Northeast, the Midwest, the South, and the West.

The Department of Veterans Affairs is now in the process of implementing this law. Clinics are expected to begin operation no later than 1992 in five States: Arizona, Maine, Missouri, Washington, and North Carolina. Under the pilot program, the clinics will provide limited outpatient services including immunizations, preventive health care, posthospital followup services, and treatment of chronic conditions.

I applaud the efforts of my distinguished colleagues, especially the majority leader, Mr. MITCHELL, the distinguished chairman of the Senate Committee on Veterans' Affairs, Mr. CRANSTON, and my distinguished colleagues from Arizona, Mr. DECONCINI, and Vermont, Mr. LEAHY, for their leadership in securing passage of this mobile health care clinic initiative and in focusing attention on the special health care needs of rural veterans.

I am concerned, however, about the 25 States including North Dakota, which are not part of the original pilot program to assist rural veterans. Because the current pilot program will

not become operational until 1992, further expansion of these clinics is at least 2 years away. In the meantime, rural veterans continue to be denied access to this important health care option.

Mr. President, the Department of Veterans Affairs has had considerable experience with health care services for rural veterans, including the benefit of several demonstrations during the 1980's involving of mobile health care clinic programs in Western States. Drawing on this experience, I believe the DVA can design an effective mobile clinic program that will bring vital health care services to veterans in remote parts of the country.

We have a moral obligation to provide our veterans with the best and most accessible health care possible. We must rely on innovative approaches to meet the needs of veterans in isolated, rural areas of the country. This bill would substantially improve the health services available to rural veterans, and I strongly urge my colleagues to join in supporting it. I thank the Chair and yield the floor.

Mr. President, I ask unanimous consent that the text of this legislation be printed at the conclusion of my remarks.

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

S. 1424

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MOBILE HEALTH-CARE CLINIC PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Chapter 17 of title 38, United States Code, is amended by adding at the end of subchapter II the following new section:

"§ 620D. Health care through mobile clinics

"(a) During the five-year period beginning on October 1, 1991, the Secretary shall conduct a rural mobile health care clinic program in States where significant numbers of the resident veterans reside in rural areas (as determined by the Secretary). The Secretary shall conduct the program in accordance with this section.

"(b) In carrying out the mobile health care clinic program, the Secretary shall provide health care services to the veterans described in subsection (c) at locations convenient to the residences of such veterans by furnishing such services through the use of mobile health care clinics equipped, operated, and maintained in an appropriate manner by personnel of the Department.

"(c) A veteran is eligible to receive health care services through mobile health care clinics under the program if the veteran—

"(1) is eligible for health care under this chapter; and

"(2) resides (A) in a State referred to in subsection (a), and (B) at least 100 miles from the nearest Department health-care facility.

"(d) The Secretary shall commence operation of at least three mobile health care clinics in each fiscal year of the program. The Secretary may not operate more than one mobile health care clinic in any State in any such fiscal year.

"(e) Not later than September 30, 1997, the Secretary shall submit to Congress a report containing an evaluation of the program. The report shall include the following:

"(1) A description of the program, including (A) the number of mobile health care clinics operated under the program, (B) the States in which such clinics were operated, (C) the health care services furnished by the clinics, (D) a description of the veterans who were furnished care by the clinics, and (E) the costs of furnishing such care.

"(2) An assessment by the Secretary of the effectiveness of the program in furnishing health care to veterans referred to in subsection (c).

"(3) Any plans for administrative action, and any recommendations for legislation, that the Secretary considers appropriate.".

(b) CLERICAL AMENDMENT.—The table of sections of such chapter is amended by inserting after the item relating to section 620C the following new item:

"620D. Care through mobile clinics.".

SEC. 2 AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for the conduct of the mobile health care clinics program required by section 620D of title 38, United States Code (as added by section 1), as follows:

(1) For fiscal year 1992, $3,000,000.
(2) For fiscal year 1993, $6,000,000.
(3) For fiscal year 1994, $9,000,000.
(4) For fiscal year 1995, $12,000,000.
(5) For fiscal year 1996, $15,000,000.

By Mr. DIXON:

S. 1425. A bill to authorize the President to appoint a chief executive officer for the Resolution Trust Corporation; to the Committee on Banking, Housing, and Urban Affairs.

APPOINTMENT OF CHIEF EXECUTIVE OFFICER OF THE RESOLUTION TRUST CORPORATION

Mr. DIXON. Mr. President, for some time I have been hearing from a variety of sources that the Resolution Trust Corporation is floundering. Citizens in my State of Illinois are joining the nationwide chorus in asking what the RTC is doing? Why can it not be run more efficiently? Some Washington voices have dismissed the RTC's ineptitude as merely "business as usual" for a giant bureaucracy. Some have blamed the administration for creating the RTC. Others blame the Congress for approving the RTC structure. And, when there is no one left to blame, the economy becomes the culprit.

Mr. President, it is time for the blame to stop and thoughtful reconstruction to begin. The time for business as usual is over. The enormity of the problem, the repercussions to our Nation's financial health and the need to protect the taxpayer all underscore the importance of our mission.

In 1988, the administration asked for $19 billion to clean up the savings and loan industry. In 1989 the figure was revised upward to $40 billion. Now Chairman Seidman and Secretary Brady tell us that $160 billion will be needed—$160 billion, This is $141 billion more than the administration told us it would need shortly after the election of 1988. This is a staggering sum by any calculation, but it is horrifying at a time when all of the signals tell us that the RTC's house is not in order.

Mr. President, last week, the Consumer and Regulatory Affairs Subcommittee, which I chair over at the Senate Banking Committee, held a hearing on the real estate asset disposition activities of the Resolution Trust Corporation.

At that hearing Philip Searle, who is chairman of the national advisory board to the RTC Oversight Board, offered an analysis of the problem and a recommended solution. I would like all Senators to hear what he had to say. I agree with his recommendation and intend to push for its implementation.

Searle stated:

A major flaw in FIRREA was to choose to staff the RTC largely with career bank or thrift bureaucrats. Although such staffing may have been suitable for handling resolutions, it is inappropriate now that the RTC's primary mission is asset disposition, that is, managing successfully the largest real estate sales organization in history in an entrepreneurial, freemarket economy and society.

He continued:

The most important single action that can be taken with respect to improving the people is the recruitment of a highly-qualified, experienced chief executive officer and senior management team for the RTC from the private sector. Unless this is done, the likelihood that the necessary sales/marketing culture will be installed in RTC is nil.

Many people are critical of the two-board structure which the administration designed for the RTC. There is the Oversight Board and the RTC board; the RTC's board is the same as the FDIC's board. And as we all know too well, the FDIC has an awful lot to do these days. I was never a fan of this split authority, but the administration had wanted it this way and Congress decided to go along. We hoped that the Oversight Board would help in providing actual oversight over the RTC's operations.

Twenty months into the RTC's life, we now find a mess. The GAO says that the real estate asset disposition activities are "disappointing." The testimony I heard last week was more critical than just "disappointing." As of the end of the first quarter of 1991, the RTC owned $18 billion of real estate, and had managed to sell only $5 billion through all of its combined sales activities. In addition, the RTC held $21 billion of delinquent real estate loans. All told, its total inventory of assets exceeded $160 billion on March 31.

We have given the administration enough time to start up this organization. Now Congress must say, "Enough is enough. These problems must be fixed."

The quickest and best solution, in my view, is to find a topflight chief executive with outstanding private sector experience. Let us recruit such a man or woman and put him or her in charge. That person could then assemble a dynamic team who have the proper professional expertise to manage the RTC and dispose of assets at the highest possible return to the taxpayers.

We have a major national problem with the RTC, and we need to call forth the best from our private sector to fix it. I do not want to embarrass the many dedicated, hard-working professionals at the RTC; I commend them for their public service.

I do believe, however, that many people over there are in over their heads. They are doing the best they can, but we need better. We need a dynamite individual to take charge and to put in place an experienced senior team of professionals.

Mr. President, today I am introducing a bill that calls for a new RTC chief executive officer. This CEO would be appointed by the President and confirmed by the Senate.

In a time when finger pointing and sidestepping responsibility has become epidemic, we need a strong executive who can make decisions and make the RTC work. I do not mean to imply that all of the RTC's problems will be instantly solved. They will not. Clearly the debris from the savings and loan crisis will continue to litter our economic landscape for some time. But I do believe that a strong CEO can take action to solve the bureaucratic nightmares which we hear about in horror story after horror story.

It will be a tough job and there will be nowhere to hide. The person will stand to receive great credit or great criticism. We must find one person who can take responsibility for this colossal bureaucracy called the RTC.

With $160 billion of the taxpayer's dollars invested in this cleanup, it is imperative that we give someone the tools to do the job well and do the job now.

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. APPOINTMENT OF CHIEF EXECUTIVE OFFICER OF THE RESOLUTION TRUST CORPORATION.

Section 21A(b)(1) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(1)) is amended by adding at the end the following new subparagraph:

"(D) CHIEF EXECUTIVE OFFICER.—

"(i) APPOINTMENT.—The President is authorized to appoint, by and with the advice and consent of the Senate, an individual to serve as the chief executive officer of the Corporation for such term as the President determines.

"(ii) RESPONSIBILITIES.—Notwithstanding any other provision of this Act, the chief executive officer shall—

"(I) carry out the daily administrative and business affairs of the Corporation;

By Mr. BUMPERS (for himself, Mr. MITCHELL, Mr. BAUCUS, Mr. HARKIN, Mr. WELLSTONE, and Mr. LIEBERMAN):

S. 1426. A bill to authorize the Small Business Administration to conduct a demonstration program to enhance the economic opportunities of startup, newly established, and growing small business concerns by providing loans and technical assistance through intermediaries; to the Committee on Small Business.

SMALL BUSINESS ECONOMIC OPPORTUNITY ENHANCEMENT ACT

Mr. BUMPERS. Mr. President, I am pleased to be joined by the distinguished majority leader in introducing a bill to establish an innovative new program in the Small Business Administration which holds promise of expanded economic opportunity for thousands of Americans at the bottom of the economic ladder. Senator MITCHELL along with Senators BAUCUS, HARKIN, LIEBERMAN, WELLSTONE, GRASSLEY, AND DIXON, are cosponsors of this bill which will establish SBA's first microlending program.

Mircroloans, Mr. President, are very modest loans—anywhere from a few hundred to a few thousand dollars—to the smallest businesses, those which usually have little or no credit history or access to capital from conventional sources. People who are most economically disadvantaged have been overlooked for too long, both by SBA and by the House and Senate Committees on Small Business. We have concentrated on helping existing businesses become more successful, or helping successful individuals to start businesses, rather than focusing on economic opportunity for the least advantaged.

First, let me give the Bush administration some credit for having suggested this program, although the administration's followthrough has been less than I first hoped. Last December, I was elated to read in the Wall Street Journal that the President's budget for fiscal year 1992 would contain a new proposal for a microloan program for severely economically disadvantaged individuals. It was said the Small Business Administration would manage this program. It seemed to me that the microloan concept was timely and was a hopeful sign of a new attitude toward small business and economic opportunity from an administration which has had little concern for either.

When the President's budget arrived, however, we had to read the fine print to even discover the ballyhooed microloan initiative. After a hearing in the Committee on Small Business, it became readily apparent that there was no real proposal under serious consideration. I am glad to say, however, that this has changed.

When Pat Saiki was nominated as Administrator, I encouraged her to develop a microloan program, and to come back to our committee with legislation if needed. She and her staff have been cooperative with our committee staff and with various groups around the country who are managing successful microloan programs. While I cannot say that this bill is an administration bill—and clearly is it not—I do believe that Pat Saiki and many dedicated professionals at SBA would like very much a program like this enacted. In fact, she recently sent me the Administration's legislative proposal. While that bill is well intended and has some good ideas, it is not the bill which Senator MITCHELL and I are today introducing.

The Senate Small Business Committee held a hearing on May 6, of this year, and it was one of the best hearings I can recall sitting through. We heard testimony from community organizations around the country who are successfully making microloans today. We also heard a recording of a story which aired on National Public Radio a few weeks earlier which concerned Pine Bluff, AR. So, it had my full attention. An organization in Pine Bluff called the Good Faith Fund has been making microloans for almost 2 years. The NPR reporter interviewed a Pine Bluff woman who had borrowed $1,500 to buy a cookstove and a steam table. Working in her own business has been her dream for years. Today, she is happily and successfully operating a catering business. Blessed with a talent for cooking and a desire to work, she finally has what she needs for a chance at success—a little money. She said that all of her borrowing group had one thing in common: "We're all hard workers." It was a heartwarming story, and one which can be replicated across the country.

The Good Faith Fund, incidentally, along with some other microloan programs, utilizes a lending model from the Grameen Bank of Bangladesh. It is ironic at least that Americans who have expended so many billions for economic development in other countries would today look to one of the least developed countries to learn how to develop our own country. The Grameen Bank utilizes committees of borrowers who have authority to decide who among them will first be eligible for a loan, and who also have responsibility for collecting the loan. The borrowers, both in Pine Bluff and in Bangladesh, meet in these committees regularly to discuss their problems and possible solutions. In so doing, they all learn more about business, and they provide each other with a support system which helps keep them going when times get tough.

Mr. President, here is what we proposed to do: SBA will make direct loans at the Treasury's cost of money to nonprofit community organizations for the purpose of microlending. First of all, this is purely a pilot program. In the first year we will authorize no more than 35 projects, and in the second year, SBA may choose up to 20 more projects. No State may receive more than $1 million in funding for not more than two projects in the first year, and no one organization may get

more than $750,000 in the first year. Most, I believe, will choose to borrow substantially less. In the second year of funding, a single organization may borrow up to an additional $500,000 if they are successful, and State funding may total up to $1.5 million with a possibility of two additional projects per State.

This program is aimed at very small borrowers. A loan may not exceed $15,000, unless the borrower shows that he or she cannot obtain credit elsewhere and has good prospects for success. In no event can a loan exceed $25,000, and the average loan will be much less because intermediaries must maintain an average loan portfolio of less than $10,000 for each loan.

An integral part of successful microlending is intensive technical assistance for the borrowers. All sources agree that these borrowers need, in almost every instance, much more training, teaching and handholding than does the ordinary small business borrower. Bear in mind that we are talking in some cases about people who are on public assistance, notwithstanding that they would prefer not to be. Some of these people do not have bank accounts as yet. Yet, I am convinced beyond any doubt, many of these people are capable and hard workers and want more than anything in life to break the cycle of poverty and dependence.

We are saying to these people, "Yes, it can be done, and we want to help."

To fund the technical assistance and training which is needed, this bill will provide for grants equal to 20 percent of the amount loaned for microloans. Moreover, the lending intermediaries will be required to provide a 50-percent match, which may include in-kind contributions, for this technical assistance grant. In addition, borrowing organizations will be required to provide a 15-percent match in cash of the amount they seek to borrow from SBA. This 15-percent cash match will, in effect, fund a loan loss reserve to help ensure that the intermediaries are able to repay SBA.

Loans will be made to individuals by the intermediary organizations, not by SBA. SBA will serve as the banker for the intermediaries, but it does not have either the resources or the skills to provide the technical assistance needed by this class of borrowers. SBA will not review individual loan applications for the intermediaries, but it will require certain annual reports of successes and failures by the intermediaries.

The lending organizations will borrow from SBA at a rate of interest based on the 5-year Treasury bill rate. We will, however, permit the intermediaries to amortize their loans over 10 years. They will, in turn, be permitted to charge borrowers up to four points above the prime rate of interest, as established quarterly by SBA. Clearly, Mr. President, this program is not a give-away for anyone. It is a loan program, not a grant program. It is an introduction to the cold, hard facts of business life. You have to pay interest to borrow money, and you have to pay the money back in a timely fashion. Only by following these realities will the borrowers be able to establish a credit record which will enable them to make the transition to the economic mainstream.

And that is the point of this program—to allow those who haven't had much of chance to participate in our economy by starting a business. We give a lot of lip service in this body to entrepreneurship. The entrepreneur and the small business owner have been responsible for the preponderance of economic growth over the last 10 years. Most of the new jobs have come from small companies, not from the Fortune 500. Senators love to recite these facts, and everyone loves small business, even though we don't often do much for them and often put new burdens on them. This bill offers a chance for Senators to put their money where their mouth is. If we really believe in the free enterprise system and the hope it offers, then we should make it accessible to everyone. If free enterprise is the solution for Eastern Europe and the Soviet Union and Bangladesh, maybe we should encourage it a little more here. I ask all Senators to cosponsor this bill.

Mr. MITCHELL. Mr. President, I am pleased to join the chairman of the Small Business Committee in introducing the Small Business Economic Opportunity Enhancement Act of 1991. Senator BUMPERS has been encouraging the Small Business Administration implement a program of this type for several years, and I commend him for all the work he has put into this initiative.

Very small businesses are seldom the focus of public policy or resources. Yet there is growing recognition that microbusinesses play a vital role in job creation and economic growth. It is estimated that very small businesses and microenterprises provide more than 50 percent of all new job opportunities nationwide, yet they are totally underserved by the Federal Government. For example, in 1988 out of the over 17,000 loans made by the SBA, only 3 percent of the total loans made by the agency were for amounts under $25,000. In the same year, only .01 percent of the SBA's total obligations represented loans of less than $10,000. For rural areas, where one-quarter of the Nation's population live, only one loan of less than $10,000 was made.

It is no secret that it is very difficult today for small businesses, particularly microbusinesses and solely owned proprietorships, to obtain credit. In fact, I have heard from some small-business people that they've lost their line of credit even though they've never made a late payment. Small businesses with lower lending needs, shorter credit histories, and less conventional forms of security are victims of the new financial environment, where access to credit is nearly nonexistent. The so-called credit crunch is not so much a matter of less money being lent—it's a matter of more particular lending: the larger, more secure, safer risks are getting the loans. As a result, many small businesses are suffering and many potential businesses are unable to start up.

We are pleased to be introducing legislation to demonstrate the effectiveness of small-business activity in creating job and enterprise opportunity, especially in areas hit hardest by the recession. Also, to demonstrate the effectiveness of intermediary organizations in assisting small businesses through a range of financing and technical assistance services. The Small Business Committee held a hearing in May to examine microbusiness development programs and the SBA. The legislation we have developed is a direct result of the testimony provided at that hearing by the SBA, bankers, and intermediary organizations who are currently involved in lending.

This legislation will make funds available through the Small Business Administration to intermediary, nonprofit organizations with a demonstrated record of achievement in microbusiness lending. The intermediaries will then loan the money to very small businesses or entrepreneurs with limited financial resources who are unable to obtain commercial credit, yet possess the potential to be successful. Such a program can also eventually enable these businesses to develop a positive credit rating with commercial lending institutions.

Accompanying the lack of capital being provided to microbusinesses is the absence of technical assistance—planning, cash flow management, business development, and other services to help these companies establish and expand themselves. This issue is also addressed in the legislation, to enable the intermediaries to provide the technical assistance so desperately needed by these new and growing small businesses.

In the current recession, lending to very small businesses can be a cost-effective way to create jobs and retain jobs. By providing short-term, small-scale financial assistance in the form of microloans, this legislation will enable a number of hardworking, innovative Americans to pursue and achieve some very simple goals: to become or remain employed; to become or remain self-sufficient tax-paying citizens; and to achieve or retain a decent standard of living in difficult economic times. These are goals that every American has the right to pursue and achieve. I

hope you will join me in supporting this legislation.

By Mr. RUDMAN (for himself and Mr. SMITH):

S. 1427. A bill to amend title 28, United States Code, to authorize the appointment of an additional bankruptcy judge; to the Committee on the Judiciary.

APPOINTMENT OF ADDITIONAL BANKRUPTCY JUDGE

• Mr. RUDMAN. Mr. President, I rise today, along with Senator SMITH, to introduce legislation to add a second bankruptcy judgeship for the New Hampshire Judicial District. The Judicial Council for the First Circuit has voted unanimously to support the second judgeship and it is my understanding that the Judical Conference Committee on the Administration of the Bankruptcy System is in the process of conducting an assessment according to its procedures. Unfortunately, it does not appear that the assessment process will be completed before the Senate considers the general bankruptcy judgeship bill now pending in the Judiciary Committee; thus the need for this legislation.

The need for a second bankruptcy judgeship for New Hampshire is clear. Statistical information on caseload volume unequivocally shows that New Hampshire exceeds the criteria for creation of an additional bankruptcy judgeship. When evaluating requests for additional bankruptcy judgeships, the Committee on the Administration of the Bankruptcy System has established a two-prong threshold test. The first is a caseload of 1,800–2,000 filings per judgeship and the second is 100 chapter 11 filings per judgeship.

For 1990, the workload figures indicate that total filings per judgeship in the District of New Hampshire have risen to 2,568, up 94 percent over 1989. Over the past 5 years, New Hampshire was second in the Nation in terms of percentage increase of total case filings, with an increase of 361 percent. In terms of New England States, New Hampshire has the highest frequency of bankruptcy filings relative to the number of households per State, for calendar year 1990. The district also has an extraordinarily high number of chapter 11 filings. For the period ending September 30, 1990, 150 chapter 11 cases were filed in the State. The national average was 69 chapter 11 cases per judge.

Having reviewed the data, I have no doubt that the demands upon New Hampshire's sole bankruptcy judge are excessive and that the statistics from his court justify an additional judgeship. A permanent judgeship is the only solution for New Hampshire to ensure the responsibility and accountability of judicial case management and to promote continuity of involvement with the cases. Given the statistics, it is only fair and equitable to grant New Hampshire the same benefits as other jurisdictions with lighter caseloads.•

• Mr. SMITH. Mr. President, I am pleased to join my colleague from the State of New Hampshire in introducing legislation to create an additional bankruptcy judge for our State.

The Judicial Council for the First Circuit Court of Appeals has voted unanimously to recommend an additional bankruptcy judge for New Hampshire. In addition, the caseload of New Hampshire's existing judgeship clearly exceeds criteria established by the Committee on the Administration of the Bankruptcy System.

That committee required a caseload of 1,800 to 2,000 filings per judgeship. The 1990 New Hampshire figures were 2,568 filings for one bankruptcy judge.

The second criterion is 100 chapter 11 filings per judgeship. For fiscal year 1990, New Hampshire had 150 chapter 11 cases.

So, Mr. President, it is clear that our State is in serious need of the relief which this legislation would provide, and I would urge that my colleagues on the Senate Judiciary Committee act speedily to grant us that relief.•

By Mr. ROTH:

S. 1428. A bill to amend the Foreign Assistance Act of 1961, the Export-Import Bank Act of 1945, and the Commodity Credit Corporation Charter Act to prohibit the noncompetitive awarding of insurance contracts on certain Government-supported exports; to the Committee on Banking, Housing, and Urban Development.

U.S. INSURANCE AND OVERSEAS AID ACT

• Mr. ROTH. Mr. President, I suspect that many Members of the Senate will be shocked by the content of the legislation which I am placing before the Senate today. I believe they will be shocked because it will reveal to them a problem of which many of them are unaware and which may make them somewhat angry.

Mr. President, this Nation generously assists other nations which are in need. It sends emergency food assistance to the hungry. It assists in the financing of transactions which the recipient nation otherwise might not be able to afford. It advances credits to nations which lack the ready cash to purchase U.S. agricultural products. Many of these transactions and shipments are of considerable size and the insurance contracts associated with these transactions are of considerable value.

Who would believe that, in many cases, U.S. insurance companies are excluded from bidding on insurance contracts relating to U.S. aid shipments and U.S.-financed transactions? And, furthermore, who would believe that those U.S. companies are excluded because of regulations issued by the recipients of U.S. foreign assistance? In short, Mr. President, the message we hear from abroad is, "Yes, we will accept your commodity credits but, no, we will not allow your insurance companies to bid on these transactions.

This is absurd. U.S. insurance companies are being told that they cannot bid upon transactions and shipments financed and paid for by the U.S. taxpayer.

In order to remedy this absurd situation, I am introducing the U.S. Insurance and Overseas Aid Act. The purpose of this legislation is quite simple. It amends the Foreign Assistance Act of 1961 and the Export-Import Bank Act of 1945 and the Commodity Credit Charter Act to prohibit the noncompetitive awarding of insurance contracts on Government supported exports. It entrusts the Office of the U.S. Trade Representative with monitoring the nondiscriminatory, fair treatment of insurance companies in the granting of insurance contracts in these circumstances.

Finally, it asserts that, on occasions where the Office of the U.S. Trade Representative finds that U.S. insurance companies have been the victims of discrimination, then the insurance contracts on the shipment or shipments in question shall be open only to U.S. insurance companies.

Mr. President, I would ask my colleagues to note that this is not a protectionist piece of legislation. It does not mandate that any contract should be reserved to U.S. insurance companies. It simply ensures fair play for all, and I am sure that we are all in favor of that.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD immediately following my remarks.

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

S. 1428

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 2 of part I of the Foreign Assistance Act of 1961 is amended by inserting after section 240A the following new section:

"SEC. 240B. PROHIBITION ON NONCOMPETITIVE AWARDING OF INSURANCE CONTRACTS ON CERTAIN GOVERNMENT-SUPPORTED EXPORTS.

(a) PROHIBITION.—No insurance, reinsurance, guarantee, or other financing may be issued by the Corporation with respect to any investment in a project unless the appropriate investor first certifies to the Corporation that any contract for the export of goods as part of such investment shall include a clause requiring that United States insurance companies have a fair and open competitive opportunity to provide insurance against risk of loss of such export.

"(b) REPORTS BY UNITED STATES TRADE REPRESENTATIVE.—The United States Trade Representative shall review the actions of the Corporation under this section and, after consultation with representatives of United States insurance companies, shall report to

the Congress in the report required by section 181(b) of the Trade Act of 1974 with respect to such actions.

"(c) DEFINITIONS.—For purposes of this section—

"(1) the term 'United States insurance company'—

"(A) includes an individual, partnership, corporation, holding company, or other legal entity which is authorized, or in the case of a holding company, subsidiaries of which are authorized, by a State to engage in the business of issuing insurance contracts or reinsuring the risk underwritten by insurance companies; and

"(B) includes foreign operations, branches, agencies, subsidiaries, affiliates, or joint ventures of any entity described in subparagraph (A);

"(2) United States insurance companies shall have had a 'fair' and open competitive opportunity to provide insurance' if they—

"(A) have received notice of the opportunity to provide insurance; and

"(B) have been evaluated on a nondiscriminatory basis.".

SEC. 2. EXPORT—IMPORT BANK OF THE UNITED STATES.

The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended by adding at the end the following:

"SEC. 17. PROHIBITION ON NONCOMPETITIVE AWARDING OF INSURANCE CONTRACTS ON CERTAIN GOVERNMENT-SUPPORTED EXPORTS.

"(a) PROHIBITION.—The Bank may not guarantee, insure, extend credit or participate in the extension of credit with respect to any export unless the Bank receives a certification that any contract relating to the export of goods shall include a clause requiring that United States insurance companies have a fair and open competitive opportunity to provide insurance against risk of loss of such export.

"(b) REPORTS BY UNITED STATES TRADE REPRESENTATIVE.—The United States Trade representative shall review the actions of the Bank under this section and, after consultation with representatives of United States insurance companies, shall report to the Congress in the report required by section 181(b) of the Trade Act of 1974 with respect to such actions.

"(c) DEFINITIONS.—For purposes of this section—

"(1) the term 'United States insurance company'—

"(A) includes an individual, partnership, corporation, holding company, or other legal entity which is authorized, or in the case of a holding company, subsidiaries of which are authorized, by a State to engage in the business of issuing insurance contracts or reinsuring the risk underwritten by insurance companies; and

"(B) includes foreign operations, branches, agencies, subsidiaries, affiliates, or joint ventures of any entity described in subparagraph (A);

"(2) United States insurance companies shall have had a 'fair and open competitive opportunity to provide insurance' if they—

"(A) have received notice of the opportunity to provide insurance; and

"(B) have been evaluated on a nondiscriminatory basis.".

SEC. 3. COMMODITY CREDIT CORPORATION.

The Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.) is amended by adding at the end the following new section:

"SEC. 20. PROHIBITION ON NONCOMPETITIVE AWARDING OF INSURANCE CONTRACTS ON CERTAIN GOVERMENT-SUPPORTED EXPORTS.

"(a) PROHIBITION.—The Corporation may not guarantee, insure, extend credit or participate in the extension of credit with respect to any export unless the Corporation receives a certification that any contract relating to the export of agricultural commodities shall include a clause requiring that United States insurance companies have a fair and open competitive opportunity to provide insurance against risk of loss of the export.

"(b) REPORTS BY UNITED STATES TRADE REPRESENTATIVE.—the United States Trade Representative shall review the actions of the corporation under this section and, after consultation with respresentatives of United States insurance companies, shall report to Congress in the report required by section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)) with respect to the actions.

"(c) DEFINITIONS.—For purposes of this section:

"(1) UNITED STATES.—The term 'United States insurance company'—

"(A) includes an individual, partnership, corporation, holding company, or other legal entity that is authorized, or in the case of a holding company, subsidiaries of which are authorized, by a State to engage in the business of issuing insurance contracts or reinsuring the risk underwritten by insurance companies; and

"(B) includes foreign operations, branches, agencies, subsidiaries, affiliates, or joint ventures of any entity described in subparagraph (A).

"(2) FAIR AND OPEN COMPETITIVE OPPORTUNITY TO PROVIDE INSURANCE.—The term 'fair and open competitive opportunity to provide insurance' means, with respect to a United States insurance company, that the company—

"(A) has received notice of the opportunity to provide insurance; and

"(B) has been evaluated on a nondiscriminatory basis.".

SEC. 4. DETERMINATIONS OF DISCRIMINATION.

(a) DETERMINATION BY THE UNITED STATES TRADE REPRESENTATIVE.—Whenever the United States Trade Representative determines that United States insurance companies have been denied a fair and open competitive opportunity to provide insurance against risk of loss in violation of section 240B of the Foreign Assistance Act of 1961, section 17 of the Export-Import Bank Act of 1945, or section 20 of the Commodity Credit Corporation Charter Act as added by this Act, then—

(1) the Overseas Private Investment Corporation may not insure, reinsure, finance, or otherwise assist in any investment.

(2) the Export-Import Bank may not guarantee, insure, extend, credit, or participate in the extension of credit with respect to any export, and

(3) the Commodity Credit Corporation, may not guarantee, insure, extend credit, or participate in the extension of credit with respect to any export of agricultural commodities,

unless the transaction involves a United States firm, subsidiary, or affiliate doing business in a foreign country with which the United States has an agreement regarding the insurance of international transactions.

(b) REGULATIONS REQUIRED.—The United States Trade Representative shall prescribe such regulations as may be necessary to carry out this section.●

By Mr. RUDMAN (by request):

S. 1429. A bill to amend the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979, as amended, to authorize appropriations for fiscal years 1992 and 1993, and for other purposes; to the Committee on Commerce, Science, and Transportation.

S. 1430. A bill to amend the Federal Railroad Safety Act of 1970, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NATURAL GAS PIPELINE SAFETY ACT AND THE FEDERAL RAILROAD SAFETY ACT AUTHORIZATION

Mr. RUDMAN. Mr. President, I rise this afternoon to introduce by request two bills on behalf of the administration. The first is entitled the Natural Gas Pipeline and Safety Act of 1991 and I would ask that a copy of the bill be printed in the RECORD following my remarks. I would also ask that the transmittal letter from Department of Transportation Secretary Samuel K. Skinner to Vice President DAN QUAYLE be printed in the RECORD following my remarks, as well as a section-by-section analysis of the bill itself.

I also introduce by request the Federal Railroad Safety Authorization Act of 1991, and ask that the bill itself, the transmittal letter from Department of Transportation Secretary Samuel K. Skinner to Vice President DAN QUAYLE, and a section-by-section analysis be printed in the RECORD following my remarks.

I ask that these two pieces of legislation be appropriately referred to the committee of jurisdiction.

Thank you, Mr. President.

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

S. 1429

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Pipeline Safety Reauthorization Act of 1991".

TITLE I—NATURAL GAS

SEC. 101. This title may be cited as the "Natural Gas Pipeline Safety Authorization Act of 1991."

SEC. 102. Section 2(3) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. §1671(3)) is amended by inserting the words "(including the control of gas being delivered in consumer-owned pipe)" immediately following the words "distribution of gas".

SEC. 103. Section 3 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. §1672) is amended—

(1) by inserting the words "that has submitted a current certification under section 5(a) of this Act" in paragraph (a)(1) between the words "Any State agency" and "may adopt additional or more stringent safety standards";

(2) by adding the following at the end of subsection (g): "The Secretary may extend such regulation to require existing transmission facilities to be modified to require existing transmission facilities to be modified to permit the inspection of such facili-

ties with instrumented internal inspection devices."

SEC. 104. Section 5 of the Natural Gas Piepline Safety Act of 1968 (49 U.S.C. App. §1674) is amended by removing the words "(including a municipality)" from paragraphs (a) and (b), both places they appear.

SEC. 105 Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. §1674(a)) is amended—

(1) by removing the word "when" in the first sentence of subsection (a) and inserting the words "to the extent that" in its place; and

(2) by removing the words "$5,000" and adding the words "an amount established by the Secretary".

(3) by adding the following new subsection (g):

"(g) The Secretary may, by regulation, assess the costs incurred by the Department of Transportation in monitoring the design and construction of facilities prior to their operation. Such amounts shall be collected from the persons responsible for the development of the pipeline facilities, and shall be deposited into the Pipeline Safety Fund. Amounts collected under this section shall be available, until expended, without further appropriation, up to $500,000 for each fiscal year, to pay the Federal costs of the monitoring."

SEC. 108. Section 16(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. §1683(a)) is amended by replacing the words "April 15" with "August 15".

SEC. 109. Section 17(a)(9) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. §1684 is amended:

(1) by striking "and" at the end of paragraph (a)(8);

(2) by striking the period at the end of paragraph (a)(9) and inserting a semicolon;

(3) by adding the following new paragraphs (a)(10) and (11) as follows:

"(a)(10) $5,562,000 for the fiscal year ending September 30, 1992; and

"(a)(11) Such sums as may be necessary for the fiscal year ending September 30, 1993.";

(4) by removing the word "1991" from the heading in subsection (c) and inserting the word "1993" in its place; and

(5) by removing the word "and" immediately preceding the word "5,500,000" in subsection (c), removing the period from the last sentence of subsection (c), and adding the words ", $7,000,000 for the fiscal year ending September 30, 1992, and such sums as may be necessary for the fiscal year ending September 30, 1993.".

TITLE II—HAZARDOUS LIQUIDS

SEC. 201. This title may be cited as the "Hazardous Liquid Pipeline Safety Authorization Act of 1991."

SEC. 202. Section 203 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. §2002) is amended by—

(1) removing the period at the end of pargraph (a)(1) and inserting the words "and the protection of the environment.";

(2) inserting the words "including the environment," before the word "and" in paragraph (a)(2)(A);

(3) by striking "and" at the end of pargraph (b)(3);

(4) by striking the period at the end of paragraph (b)(4) and inserting a semicolon followed by the word "and";

(5) by adding a new paragraph (b)(5) to read as follows:

"(5) the extent to which the standards will contribute to protection of the environment.";

(6) by inserting the words "that has submitted a current certification under section 205(a) of this Act" in paragraph (d) between the words "Any State agency" and "may adopt additional or more stringent safety standards";

(7) inserting the words "including environmentally sensitive areas," in paragraph (i)(2) between the words "supplementary geographic description," and "showing the location"; and

(8) by adding the following at the end of subsection (k): "The Secretary may extend such regulation to require existing pipeline facilities to be modified to permit the inspection of such facilities with instrumented internal inspection devices."

SEC. 203. Section 205(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. §2004(a)) is amended—

(1) be removing the word "when" in the first sentence of subsection (a) and inserting the words "to the extent that" in its place; and

(2) by removing the words "$5,000" and adding the words "an amount established by the Secretary".

SEC. 204. Section 208(a)(1) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. §2007(a)(1)) is amended by replacing the number "$10,000" with the number "$25,000".

SEC. 205. Section 209(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. §2008(b)) is amended by—

(1) inserting the words "including the environment," immediately following the words "life or property," in paragraphs (1), (2)(A), and (2)(B);

(2) replacing the period following the word "property" with a comma and adding the words "including the environment." in paragraphs (2)(B) and (5); and

(3) inserting the words "proximity to environmentally sensitive areas," in paragraph (3)(C) between the words "associated with such areas," and "and the population density".

SEC. 206. Section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. §2009) is amended by—

(1) removing the period following the word "safety" in paragraph (b)(4) and adding the words "and protection of the environment."; and

(2) inserting the words "proximity to environmentally sensitive areas," in paragraphs (c)(2)(D) and (d)(2)(D) between the words "pipeline facilities are located," and "and the existing and projected population".

SEC. 207. Section 211 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. §2010) is amended:

(1) by adding the following new subsection (f):

"(f) In case of contumacy or refusal to obey a subpoena, or refusal to allow officers, employees, or agents authorized by the Secretary to enter, conduct inspections, or examine records and properties for purposes of determining compliance with this Act [49 U.S.C. App. §§2001 et seq.], by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such district court shall, upon the request of the Attorney General, acting at the request of the Secretary, have jurisdiction to issue to such person an order requiring such person to comply forthwith. Failure to obey such an order is punishable by that court as a contempt of court."; and

(2) by adding the following new subsection (g):

"(g) The Secretary may, by regulation, assess the costs incurred by the Department of Transportation in monitoring the design and construction of facilities prior to their operation. Such amounts shall be collected from the persons responsible for the development of the pipeline facilities, and shall be deposited into the Pipeline Safety Fund. Amounts collected under this section shall be available, until expended, without further appropriation, up to $500,000 for each fiscal year, to pay the Federal costs of the monitoring."

SEC. 208. Section 213(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. §2012(a)) is amended by replacing the words "April 15" with "August 15".

SEC. 209. Section 214(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. §2013(a)) is amended:

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting a semicolon; and

(3) by adding the following new paragraphs (10) and (11) as follows:

"(10) $1,391,000 for the fiscal year ending September 30, 1992; and

"(11) Such sums as may be necessary for the fiscal year ending September 30, 1993."

SECTION-BY-SECTION ANALYSIS

TITLE I—NATURAL GAS

SEC. 102. This amendment would clarify the Secretary's authority to require distribution companies to provide basic maintenance, such as corrosion protection, for piping owned by the ultimate consumer of the gas. Within the last several years, gas explosions have destroyed homes and killed and injured residents in Kansas and Missouri. The explosions were due to deteriorated gas lines located in the homeowners' yards. These accidents might have been averted had the distribution company provided necessary maintenance for the lines. Although some states have already acted, the Secretary should possess clear authority to establish nationally applicable Federal minimum standards for these lines.

The distribution company, rather than the consumer, controls the flow of gas, possesses the necessary expertise with respect to the operation and maintenance of pipeline facilities, and it compensated for the gas service it provides. It is, therefore, reasonable to impose responsibility for the maintenance and safe operation of "yard" lines up to the building wall on the distribution companies regardless of the ownership of the pipe or the location of the meter. Once the pipe is within the building walls controlled by the consumer, issues relating to maintenance change and the local building and housing codes and fire ordinances provide an appropriate safety regime in lieu of federally-established pipeline safety regulation. Once the Act is amended, the Department would address piping up to the building wall, by regulation.

Amending the NGPSA in this manner would not affect the ability of state utility regulators to consider any regulations that place safety responsibility on the operators for customer owned lines when determining appropriate rates and charges for gas service.

SEC. 103. This amendment would clarify the Secretary's authority to monitor state activities. Section 3 of the NGPSA states that "[a]ny State agency may adopt additional or more stringent safety standards for intrastate pipeline transportation if such standards are compatible with the Federal minimum standards." At least one Federal circuit court has construed similar language in the HLPSA to mean that any state governing body, including local governments, may regulate intrastate pipeline transportation, without filing a certification with

the Department under Section 5(a) of the NGPSA. This interpretation impedes the Secretary's ability to monitor the activities of those states that exercise regulatory authority over intrastate pipelines. It could also result in inconsistent state safety and enforcement programs. For this reason, RSPA believes that only those states that submit annual certifications under Section 5(a) of the NGPSA should be permitted to adopt additional or more stringent safety standards for intrastate pipelines.

The proposed legislation would amend the NGPSA by clarifying the Department's authority to require, by regulation, the construction of pig traps where inspections with instrumented internal inspection devices, or "smart pigs", is necessary to assure compliance with the pipeline safety regulations.

SEC. 104. Under the existing provisions of Section 5(a) of the NGPSA, a State agency (including a municipality) may assume regulatory jurisdiction over the safety standards and practices applicable to intrastate pipeline transportation if it certifies annually to the Secretary that, among other things, it has adopted each Federal safety standard promulgated by the Secretary under the NGPSA, and conducts an enforcement program that includes inspections by qualified inspectors and authorizes the imposition of civil penalties. Section 5(b) of the Act allows the Secretary to authorize a State agency (including a municipality) to carry out on behalf of the Department certain functions relating to intrastate pipeline transportation by agreement, where no annual certification has been provided. States that participate in these cooperative programs are eligible to receive grant monies from the Department to assist them in carrying out their pipeline safety program. These cooperative programs, which now include only State government agencies, fully meet the safety objectives of the NGPSA.

No municipality has submitted a certification to date. Given the nature of pipelines, it is unlikely that pipeline safety regulation by municipalities would be preferable to regulation by State agencies having statewide jurisdiction over intrastate pipeline transportation. In addition, regulation by municipalities would impose on the Department the additional burden of monitoring local government agencies. Thus, the language including municipalities within the definition of State agency is deleted as unnecessary to meet the safety objectives.

SEC. 105. Section 5(a) of the NGPSA provides that, with certain limited exceptions, the authority of the Secretary under the Act to prescribe safety standards and enforce compliance with such standards shall not apply to intrastate pipeline transportation when the applicable safety standards and practices are regulated by a certifying State agency.

The intent of this provision was to give certifying states primary responsibility for conducting civil enforcement programs through such means as inspections, requiring record keeping, and imposing civil penalties, to assure compliance by intrastate pipeline facilities with the safety standards and to prevent unnecessary duplication of efforts in inspection and enforcement.

Some intrastate pipeline operators have construed this limited grant of authority to mean that Federal jurisdiction is totally supplanted by the state's assumption of primary responsibility for enforcement. This is incorrect. The Secretary continues to inspect and enforce in "certified" states in many situations. For example, the Secretary, not the state, inspects for and enforces Federal annual reporting requirements, new Federal regulations not yet adopted by the state, and matters involving pipeline facilities over which state authority is absent or inadequate (such as civil violations by unregulated master meters or criminal violations otherwise regulated by municipalities).

In addition, even with respect to matters clearly regulated by the state, the Secretary may, with notice and an opportunity for hearing, assert Federal jurisdiction "to achieve adequate enforcement" upon making a determination that the State agency is not satisfactorily enforcing compliance with the Federal safety standards, and the burden of proof is on the State agency to show otherwise.

To avoid misconstruing Section 5(a), the proposed legislation would, by way of clarification, expressly limit the Secretary's grant of authority to certifying states over intrastate pipeline transportation, to the extent that the certifying state is regulating the applicable safety standards and practices and is conducting a civil enforcement program.

Under the proposed legislation, Section 5(a) would also be amended to allow the Secretary to establish, by regulation, a threshold dollar amount of property damage resulting from an accident or incident for purposes of annual reporting by certifying states. This would enable the threshold dollar amount for state reporting to be consistent with the requirements for operator reporting in the pipeline safety regulations.

SEC. 106. The NGPSA was amended in 1988 by increasing the maximum civil penalty for each violation of the Act from $1,000 for each day the violation persists, to $10,000 per day. RSPA believes that the maximum civil penalty amount that can be imposed for each day of a violation should again be increased, from $10,000 to $25,000. This increase is justified as a means of promoting greater operator diligence in complying with the pipeline safety regulations. Many regulatory violations could be avoided by greater operator attentiveness to the regulatory requirements and at relatively little cost; however, the consequences of such violations may be severe. Raising the penalty ceiling would provide RSPA with greater latitude in enforcement cases against multiple offenders and in more egregious cases.

SEC. 107. Under section 14(a) of the NGPSA, the Secretary is authorized to, among other things, conduct investigations, make reports, issue subpoenas, conduct hearings, and require the production of relevant documents and records to the extent necessary to carry out his responsibilities under the NGPSA. (49 U.S.C. App. §1681(a)) Absent from that section is a clear statement of the Secretary's authority to enforce subpoenas judicially through the Attorney General. This authority may be necessary before an enforcement action is initiated because information obtained through a subpoena may assist the Department in determining whether to initiate an action, and what kind of action to take. It may also be necessary to compel pipeline testing in the event of a failure or accident in which the National Transportation Safety Board (NTSB) is not involved. This legislative amendment would make explicit the Secretary's authority to enforce subpoenas issued pursuant to the authority granted in the NGPSA.

In fulfilling the Department's responsibilities for monitoring compliance with the design and construction of pipeline facilities, the Secretary may inspect pipeline facilities and review pipeline design during the planning for and construction of the pipeline. As currently enacted, Section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985 does not allow the Secretary to assess fees against pipeline facilities prior to their operation. Furthermore, nothing explicitly allows the Secretary to establish fees to recoup the special costs of such preoperational inspections from the developers. As a result, operating pipeline facilities bear the costs of the pipeline safety program which are attributable to the construction of new, and possibly competing, facilities. This amendment will allow the Secretary to adopt rules to take into account the costs of providing Departmental services to new pipeline construction and assess those costs against the developers of new pipelines. Funds paid to the Secretary pursuant to this provision would be deposited into the Pipeline Safety Fund and made available without further appropriation.

SEC. 108. In accordance with Section 16(a) of the NGPSA, the Secretary is required to present to Congress a comprehensive report on the administration of the Act on April 15 of each year. The areas that must be reported are detailed in paragraphs (a)(1)–(11), and in many instances require information submitted by the states, which report on a calendar year basis. The April 15 deadline for submission of the Department's report to Congress generally has not allowed for the time required by the states to evaluate and prepare their data for submission and for the Department to conduct its analysis of this data for presentation in the annual report. This has resulted in the repeatedly late submission of the annual report to Congress. Amending the deadline from April 15 to August 15 would help provide sufficient time for the Department to submit its annual report on a timely basis.

SEC. 109. This amendment provides an authorization of $5,562,000 for fiscal year 1992 and such sums as may be necessary for fiscal year 1993 for continued operation of the pipeline safety program for the transportation of natural gas under the NGPSA. The amendment also provides an authorization of $7,000,000 for fiscal year 1992 for the grants-in-aid program, and such sums as may be required for fiscal year 1993.

TITLE II

SECS. 202, 205, 206. The Hazardous Liquid Pipeline Safety Act of 1979, as amended, directs the Secretary to establish minimum Federal safety standards for the transportation of hazardous liquids and for pipeline facilities. In developing standards, the Secretary is directed to consider various criteria and objectives, such as the extent to which such standards will contribute to public safety. Section 202 of the proposed bill would explicitly add protection of the environment as a consideration in developing minimum safety standards. Any condition that constitutes a hazard to the environment would also be a reportable condition. Similarly, the HLPSA authorizes the Secretary to issue an order directing corrective action if the Secretary determines that any pipeline facility is hazardous to life or property. Section 205 of the proposed bill would clarify that a hazard to the environment would also be a sufficient basis for issuance of a hazardous facility order. Protection of the environment would also be a factor in assessing the adequacy of an operator's written inspection and maintenance plan under Section 206 of the proposed legislation, as well as a consideration in determining the frequency and type of inspec-

tion and testing appropriate for hazardous liquid pipelines.

Section 202 of the Act would also be amended to allow the Secretary to require the construction of pig traps in certain situations, as established by regulation, so as to permit the use of smart pigs. This amendment is consistent with the proposed amendment to the NGPSA, for the reasons set forth in the discussion of Section 103 of this bill.

SEC. 203. This amendment would make identical changes to the HLPSA as is proposed for the NGPSA in Section 105 of this bill concerning: (1) clarification that the Secretary's grant of authority to certifying states over intrastate pipeline transportation is limited to the extent to which the certifying state is regulating the applicable safety standards and practices and is conducting a civil enforcement program, and (2) allowing the Secretary to establish the threshold dollar amount of property damage from an accident or incident for purposes of annual reporting.

SEC. 204. This amendment would make an identical change to the HLPSA as is proposed for the NGPSA in Section 106 of this bill concerning increased maximum civil penalty amounts which may be assessed for each day a violation persists.

SEC. 207. This amendment would make an identical change to the HLPSA as is proposed for the NGPSA in Section 107 of this bill concerning authority to enforce subpoenas issued pursuant to statutory authority and to assess costs incurred by the Department in preconstruction monitoring of compliance of pipeline facilities. As under the NGPSA, funds paid to the Secretary pursuant to this provision would be deposited into the Pipeline Safety Fund and made available without further appropriation.

SEC. 208. For the reasons set forth in the paragraph pertaining to Section 108 of this bill, this amendment would establish an August 15 deadline for the Secretary's comprehensive report to Congress on the administration of the HLPSA.

SEC. 209. This amendment provides an authorization of $1,391,000 for the fiscal year 1992 and such sums as may be necessary for fiscal year 1993 to support the Department's hazardous liquid pipeline safety program under the HLPSA.

THE SECRETARY OF TRANSPORTATION,
Washington, DC, May 14, 1991.

Hon. DAN QUAYLE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: There is transmitted herewith a proposed bill,

"To amend the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1969, as amended, to authorize appropriations for fiscal years 1992 and 1993, and for other purposes."

The proposed bill would authorize appropriations for the administration of the pipeline safety programs for the transportation of natural gas under the NGPSA and hazardous liquids under the HLPSA for fiscal years 1992 and 1993.

The proposed bill furthers safety initiatives enacted by the 100th Congress with regard to internal inspection of pipelines, and adds protection of the environment as an explicit consideration in regulation under the HLPSA. In recent years, the Department has increasingly based its regulatory and enforcement decisions on controlling the risks to the environment posed by the pipeline transportation of hazardous liquids. The explicit recognition of the Department's environmental role proposed here furthers the Administration's focus on environmental issues. The bill proposes to increase the maximum civil penalty amount that could be assessed per day for each violation and to allow the Secretary to assess costs incurred by the Department in monitoring the design and construction of new facilities prior to their operation. These costs would be assessed against the pipeline developer, thereby relieving operating pipeline facilities from bearing the costs of pre-operational inspections for other, and possibly competing, facilities. Funds would be deposited into the Pipeline Safety Fund and would be made available without further appropriation.

The Omnibus Budget Reconciliation Act (OBRA) requires that all revenue and direct spending legislation meet a pay-as-you-go (PAYGO) requirement. That is, no such bill should result in an increase in the deficit; and if it does, it must trigger a sequester if it is not fully offset. Offsetting collections in this bill would equal its increase in direct spending, resulting in a new zero PAYGO effect. Thus, considered alone, this bill meets the PAYGO requirement of OBRA.

The bill also contains technical amendments that serve to clarify the Department's authority to regulate intrastate pipelines under the cooperative Federal-State programs authorized by the NGPSA and HLPSA, as well as its authority to enforce subpoenas. Another amendment would change the date of the Department's annual report to Congress pursuant to the NGPSA and the HLPSA in order to allow sufficient time to collect and evaluate State data.

The proposed legislation will enhance the Department's efficient administration of the NGPSA and HLPSA. It will not adversely affect the environment. Upon enactment, some provisions of the legislation, such as possible requirements for the use of instrumented internal inspection devices, or "smart pigs", under certain circumstances, and assessing the cost of pre-operational monitoring, may result in additional costs to some pipeline operators. These costs would be offset by the ancillary benefits of assuring that new facilities comply with the pipeline safety regulations and the anticipated savings resulting from enhanced safety. For this reason, the proposed legislation will not have an inflationary impact on the economy.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of the proposed legislation to Congress, and that its enactment would be in accord with the President's program.

Sincerely,

SAMUEL K. SKINNER.

S. 1430

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Railroad Safety Authorization Act of 1991."

AUTHORIZATION FOR APPROPRIATIONS

SEC. 2. Section 214 of the Federal Railroad Safety Act of 1970 (45 U.S.C. §444) is amended by striking all words after the title and inserting immediately thereafter the following:

"(a) There are authorized to be appropriated to carry out the provisions of this Act not to exceed $41,024,000 for general safety operations, plus $26,298,000 for railroad research and development for the fiscal year ending September 30, 1992; and such sums as may be necessary for the fiscal year ending September 30, 1993. The Secretary is authorized to request, receive, and use payments from non-Federal sources for expenses incurred in training safety employees of private industry, State and local authorities, or other public authorities, other than State rail safety inspectors participating in training pursuant to section 206 of this title.

"(b) Sums appropriated under this section for railroad research and development and automated track inspection are authorized to remain available until expended.".

CLARIFICATION OF APPLICABILITY OF PENALTY PROVISIONS

SEC. 3. Section 209(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(a)) is amended by striking the parenthetical clause after "person" and inserting in its place the following: "(including but not limited to a railroad; any manager, supervisor, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; or any contractor providing goods or services to a railroad)."

PROTECTION OF RAILROAD SAFETY ENFORCEMENT PERSONNEL

SEC. 4. Section 1114 of Title 18, United States Code, is amended by inserting "or any officer or employee of the Federal Railroad Administration assigned to perform investigative, inspection, or law enforcement functions," immediately after "any employee of the Coast Guard assigned to perform investigative, inspection or law enforcement functions,".

REPEAL OF THE HOURS OF SERVICE ACT

SEC. 5. Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding a new subsection (r) as follows:

"(r)(1) The Hours of Service Act (45 U.S.C. 61–64b) is hereby repealed effective one hundred and eighty days from the date of enactment of this title."

"(2) Within one hundred and eighty days of enactment of this title, the Secretary shall issue regulations embodying the substantive provisions of the Hours of Service Act, except that the Secretary may make linguistic changes necessary to transform those provisions into regulatory form. These regulations shall become effective when published, and their issuance shall not be subject to judicial review. Any subsequent changes in these regulations, however, shall be subject to judicial review as provided in subsection (f) of this section."

"(3) After issuance of the present Hours of Service Act in regulatory form, the Secretary is authorized to amend those regulations as the Secretary deems necessary in accordance with the Secretary's general authority under subsection (a) of this section.".

REPEAL OF CERTAIN OLDER SAFETY LAWS

SEC. 6. Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding new subsections (s) and (t), as follows:

"(s)(1) The following statutes are hereby repealed effective one hundred and eighty days from the date of enactment of this title: the Safety Appliance Acts, 45 U.S.C. 1–14, 16; the Locomotive Inspection Act, 45 U.S.C. 22–34; an Act concerning Block Signal Systems, 45 U.S.C. 35; an Act concerning Inspection and Testing of Railroad Cars and Appliances, 45 U.S.C. 36–37; the Accident Reports Act, 45 U.S.C. 38–43; and the Signal Inspection Act, 49 App. U.S.C. 26.

"(2) Within one hundred and eighty days of enactment of this title, the Secretary shall

issue regulations embodying the substantive provisions of the statutes referred to in subsection (1) of this section that are not already in regulatory form at the time of enactment, except that the Secretary may make linguistic changes necessary to transform those provisions into regulatory form. These regulations shall become effective when published, and their issuance shall not be subject to judicial review. After issuance of the substantive provisions of these statutes in regulatory form, the Secretary is authorized to amend those regulations as the Secretary deems necessary in accordance with the Secretary's general authority under subsection (a) of this section. Any subsequent changes in these regulations, however, shall be subject to judicial review as provided in subsection (f) of this section.

"(t) Neither reports of accidents or incidents submitted to the Secretary in accordance with regulations issued under this title nor reports of investigations of accidents or incidents prepared by or for the Secretary in accordance with authority provided under this title, nor any part thereof, shall be submitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report or investigation.".

SECTION-BY-SECTION ANALYSIS OF THE FEDERAL RAILROAD SAFETY AUTHORIZATION ACT OF 1991

AUTHORIZATION FOR APPROPRIATIONS

Section 2 would authorize appropriations for fiscal years 1992 and 1993, for the Federal Railroad Administration's (FRA) railroad safety program. The authorization levels for fiscal year 1992 would be $41,024,000 for FRA's general safety operations, plus $26,298,000 for railroad research and development. For the fiscal year ending September 30, 1993, the bill would authorize appropriation of such sums as may be necessary.

CLARIFICATION OF APPLICABILITY OF PENALTY PROVISIONS

Section 3 would clarify that the Secretary's enforcement authority (civil penalties, injunctive relief, compliance order, and emergency orders) under the Federal Railroad Safety Act of 1970 applies to any person who violates a rule, regulation, order, or standard issued under the Act. This section would also clarify that the parenthetical list after the word "person" is language of illustration, and add as additional illustrations two categories of persons that are very likely to be in a position to commit violations: (1) owners, manufacturers, and lessees of railroad equipment, track, or facilities (e.g., an owner of track over which a railroad operates), and (2) contractors who provide goods or services to a railroad (e.g., a company that contracts to provide signal maintenance services). While the Department has no doubt that *all* categories of persons are covered by the existing statute (*see* 1 U.S.C. 1), this amendment will prevent needless litigation over Congress' intent and send a message to certain categories of persons that they need to plan their activities to be in compliance with the Act and rules and orders issued under it.

PROTECTION OF RAILROAD SAFETY ENFORCEMENT PERSONNEL

Section 4 would amend section 1114 of Title 18, United States Code, to include FRA enforcement personnel among those Federal officials and employees protected by Federal criminal law against assault, intimidation, or interference in performance of their official duties. FRA field personnel desire this protection, especially since the onset of individual liability for violations of the railroad safety laws has created an increased fear of verbal and physical assaults against these law enforcement personnel.

REPEAL OF THE HOURS OF SERVICE ACT

Section 5 would repeal the Hours of Service Act. This statute, first enacted in 1907, contains no substantive rulemaking authority. As a result, this statute is probably the greatest problem among the older (i.e., pre-1970) statutes. The countless questions left unanswered by the statutory text must be filled in by interpretation rather than by regulation, with its attendant safeguards of notice and comment. The statute contains many anomalies that a rational rulemaking process would likely eliminate. For example, dispatchers are generally limited to nine hours on duty where two or more shifts are employed but can work up to twelve hours in a one-shift operation (which could be more stressful than a multiple-shift operation).

More important, the lack of regulatory authority over duty hours—authority that other DOT agencies have with respect to their modes of transportation—precludes FRA from making use of scientific learning on the issue of sleep cycles and fatigue-induced performance failures. The Federal Railroad Safety Act of 1970 provides ample authority to deal with the entire subject of maximum work periods and minimum rest periods in light of current information on those subjects. However, the Hours of Service Act effectively precludes such a rational regulatory initiative because the Safety Act authority may only be used to supplement the earlier statutes. Where the Hours of Service Act sets a rigid requirement, e.g., maximum on-duty and minimum off-duty periods for operating employees, a regulation could not vary from it.

The proposed legislation would require that the existing substantive provisions be issued as regulations to coincide with repeal of the statute. Subject to the requirements of the rulemaking process and the scrutiny of judicial review, FRA would be free to amend those regulations to provide a more complete and consistent regulatory framework than is now possible. FRA has no intention to increase the existing maximum limits on duty hours for a normal work day (generally twelve hours in a twenty-four hour period, except for a sixteen-hour limit in certain emergencies), which are the basic protections in the current Act.

REPEAL OF CERTAIN OLDER SAFETY LAWS

Section 6 would repeal the railroad safety laws in addition to the Hours of Service Act that predated the Federal Railroad Safety Act of 1970 ("Safety Act"). The Safety Act provides the Secretary with complete authority to do what the Secretary deems necessary in the railroad safety area, except that those actions may only supplement the statutes in effect prior to the Safety Act. The older statutes contain a great deal of hackneyed language (e.g., references to the "director of locomotive inspection" (45 U.S.C. 31), an office that has not existed for decades), and are largely superfluous in light of the plenary authority ("all areas of railroad safety") contained in the Safety Act. Moreover, certain of those older statutes are actually detrimental to safety and/or sound technological development. For example, the Safety Appliance Acts contain certain prescriptions concerning rail equipment (e.g., the requirement for grabirons or handholds on the roofs of all cars in 45 U.S.C. 11) that may not make sense in light of changed car construction technology and emerging new railroad technologies such as magnetic levitation. There is a provision in existing law, 45 U.S.C. 1013, that permits the Secretary, after a hearing or based on an agreement between railroad labor representatives and the developer of the new technology, to exempt any railroad equipment from the requirements of the Safety Appliance Acts if those requirements would preclude the development or implementation of more efficient railroad equipment or other transportation innovations. However, that provision permits only a piecemeal, exemption-based approach to new technology and contains a somewhat vague standard for determining whether an exemption should be granted.

In those few substantive areas that are covered by the older statutes but as yet not covered by FRA's regulations, FRA would be required to issue regulations containing the statutes' substantive provisions within 180 days of enactment. Any subsequent substantive changes would be subject to the normal rulemaking requirements and judicial review. Also, the prohibition against use of railroad or FRA accident reports in private tort litigation—now found in 45 U.S.C. 41—would be preserved in the Safety Act.

Repeal of these statutes would have no effect on the liability of railroads for injuries suffered by railroad workers under the Federal Employers' Liability Act. ("FELA"), 45 U.S.C. §51 et seq. Sections 3 and 4 of FELA bar, respectively, the defenses of contributory negligence and assumption of the risk where the violation of "any statute enacted for the safety of employees" contributed to the employee's death or injury. Accordingly, violations of the rail safety statutes are frequently alleged as part of an action under FELA. However, existing section 208(c) of the Safety Act provides that orders or regulations issued under the Safety Act "have the same force and effect as a statute" for purposes of section 3 and 4 of FELA. Therefore, reissuance of the older safety statutes as regulations under the Safety Act would leave parties to a FELA lawsuit in the very same position as when the provisions were statutory. The point here is that, although the Department is elsewhere recommending legislation to repeal FELA, that proposal and this one are in no way linked and each should be considered on its own merits.

THE SECRETARY OF TRANSPORTATION,
Washington, DC, June 11, 1991.

Hon. DAN QUAYLE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Transmitted herewith is a bill, "The Federal Railroad Safety Authorization Act of 1991."

This bill would authorize appropriations for the Department's railroad safety program for fiscal years 1992 and 1993, and make certain amendments, primarily technical in nature, to the Federal Railroad Safety Act of 1970. It would also repeal certain older railroad safety statutes no longer needed for effective administration of the railroad safety program.

FY 1992–1993 authorization: Section 2 of the bill would authorize appropriations for general safety operations of $41,024,000, and for railroad research and development of $26,298,000 for fiscal year 1992, and such sums as may be necessary for fiscal year 1993.

Amendments to the Safety Act: Section 3 of the bill would amend the enforcement provision of the Safety Act to clarify that it applies to all "persons" and expand the language of illustration accompanying the term

"person." This is intended to prevent needless litigation and provide guidance to the regulated community.

Protection of railroad safety enforcement personnel: Section 4 would ensure that those involved in inspection, investigation, or law enforcement in connection with the railroad safety program are given the same protection from assault, intimidation, and interference now provided similar law enforcement personnel under the Federal criminal code.

Repeal of the older safety statutes: Sections 5 and 6 would repeal the Federal railroad safety statutes enacted prior to the Federal Railroad Safety Act of 1970, which provides the Secretary with authority over "all areas of railroad safety." The older statutes are all superfluous in view of the complete authority granted by the 1970 Act, and some of those statutes are actually impediments to the sound administration of the Federal railroad safety program. Regulations embodying the substantive provisions of those statutes have already been issued or would be issued to coincide with repeal.

The Omnibus Budget Reconciliation Act (OBRA) requires that all revenue and direct spending legislation meet a pay-as-you-go requirement. That is, no such bill should result in an increase in the deficit; and if it does, it will trigger a sequester if it is not fully offset. Offsetting collections allowed by this bill would recover costs of rail safety training activities, resulting in a net zero PAYGO effect. Thus, considered alone, this bill meets the pay-as-you-go requirement of OBRA.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submittal of this legislative proposal to Congress, and that its enactment would be in accord with the program of the President.

Sincerely,

SAMUEL K. SKINNER.

By Mr. CRANSTON:

S. 1431. A bill to amend the Housing Act of 1949; to the Committee on Banking, Housing, and Urban Affairs.

EXTENSION OF RURAL HOUSING PROGRAMS

• Mr. CRANSTON. Mr. President, I introduce a bill today to extend for 1 year the authorization for two important rural housing programs.

The National Affordable Housing Act, enacted last year, provided a 2-year reauthorization of the major rural housing programs. Due to an inadvertent drafting error, two programs were reauthorized only through fiscal year 1991, although appropriations were authorized for fiscal years 1991 and 1992.

The bill I offer today would extend the authorizations for these programs—the section 515 Rural Rental Loan Program and the section 523 Mutual and Self-Help Housing Grant and Loan Program—through fiscal year 1992.

This is a simple, straightforward reauthorization to correct a technical error in last year's housing bill. I intend to ask my colleagues on the Agriculture Appropriations Subcommittee to include the text of this bill in this year's Agriculture and related agencies appropriations bill to ensure that these important programs are continued without disruption.•

By Mr. DOLE:

S.J. Res. 173. Joint resolution designating 1991 as the 25th anniversary year of the formation of the President's Committee on Mental Retardation, to the Committee on the Judiciary.

ANNIVERSARY YEAR OF THE FORMATION OF THE PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Mr. DOLE. Mr. President, on July 26, 1990, President Bush signed landmark legislation guaranteeing the inclusion of people with disabilities into the mainstream of American society. This law, the Americans with Disabilities Act [ADA], is intended to prevent discrimination in employment, public accommodations, transportation, and telecommunications. Many have called the day of signing the first true Independence Day for Americans with disabilities.

Prior to the ADA's enactment, few people with disabilities, particularly those with mental retardation, have had the opportunity to speak for themselves. During the last 25 years, citizens with mental retardation have shattered this myth. Not only have they spoken for themselves, but they have become their own strong vocal advocates. They are helping Americans understand that their needs are just as important as any other group of citizens.

Since the establishment of the President's Committee on Mental Retardation in 1966, the committee has been instrumental and effective in advising the President about the social, physical, medical, and biomedical needs of persons with mental retardation. To heighten public awareness, the committee has worked diligently to foster an understanding that many forms of mental retardation are preventable. Furthermore, it has created job training, career, and housing opportunities to assist those with mental retardation achieve full citizenship.

Despite all of its accomplishments, the work of the President's Committee on Mental Retardation is not yet finished. More can be done to educate the general public about the prevention of mental retardation and to assist the mentally retarded in taking their rightful place in our society.

I ask that my colleagues join me in designating the year 1991 as the 25th anniversary year of the formation of the President's Committee on Mental Retardation. I look forward to working with the committee in implementing its policy recommendations.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 173

Whereas for many years citizens with mental retardation were considered the only disability group in the United States that could not speak for themselves;

Whereas during the last 25 years citizens with mental retardation have shattered this myth, not only by speaking for themselves, but also by becoming their own strong vocal advocates and helping Americans to understand that their needs are just as important as any other group of citizens;

Whereas since it was formed in 1966, the President's Committee on Mental Retardation has been instrumental and effective in advising the President about the social, physical, medical and biomedical needs of persons with mental retardation;

Whereas the President's Committee on Mental Retardation has worked diligently to foster an understanding that many forms of mental retardation are preventable;

Whereas over 250 known causes of mental retardation result from social, biomedical, and environmental factors, and research has shown that over half of them are preventable;

Whereas during the past 25 years, the President's Committee on Mental Retardation has worked closely with local, national, and international organizations to reduce the incidence of mental retardation and to assist persons with mental retardation to achieve full citizenship as productive, taxpaying members of society;

Whereas through the efforts of the President's Committee on Mental Retardation, persons with mental retardation have been freed from back wards of institutions, training opportunities have been developed and citizens with mental retardation have been encouraged to live and work independently, securing jobs and housing, side by side with the general population;

Whereas despite all of its accomplishments, the work of the President's Committee on Mental Retardation is not yet finished as more can be done to educate the general public about the prevention of mental retardation and to assist people with mental retardation in taking their rightful place in our society: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the year 1991, is designated as the "25th Anniversary Year of the Formation of the President's Committee on Mental Retardation". The President, is authorized and requested to issue a proclamation calling upon the people of the United States to observe the Year with appropriate programs, ceremonies, and activities.

ADDITIONAL COSPONSORS

S. 88

At the request of Mr. DURENBERGER, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 88, a bill to amend the Internal Revenue Code of 1986 to make permanent the deduction for health insurance costs for self-employed individuals.

S. 140

At the request of Mr. WIRTH, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 140, a bill to increase Federal payments in lieu of taxes to units of general local government, and for other purposes.

S. 141

At the request of Mr. DASCHLE, the name of the Senator from Kentucky

[Mr. FORD] was added as a cosponsor of S. 141, a bill to amend the Internal Revenue Code of 1986 to extend the solar and geothermal energy tax credits through 1996.

S. 190

At the request of Mr. GRAHAM, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 190, a bill to amend 3104 of title 38, United States Code, to permit veterans who have a service-connected disability and who are retired members of the Armed Forces to receive compensation, without reduction, concurrently with retired pay reduced on the basis of the degree of the disability rating of such veteran.

S. 194

At the request of Mr. MCCAIN, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 194, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 311

At the request of Mr. ROTH, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 311, a bill to make long-term care insurance available to civilian Federal employees, and for other purposes.

S. 316

At the request of Mr. CRAIG, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 316, a bill to provide for treatment of Federal pay in the same manner as non-Federal pay with respect to garnishment and similar legal process.

S. 523

At the request of Mr. SIMON, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 523, a bill to authorize the establishment of the National African-American Memorial Museum within the Smithsonian Institution.

S. 533

At the request of Mr. GLENN, the names of the Senator from Illinois [Mr. SIMON], the Senator from California [Mr. CRANSTON], and the Senator from Colorado [Mr. WIRTH] were added as cosponsors of S. 533, a bill to establish the Department of the Environment, provide for a Bureau of Environmental Statistics and a Presidential Commission on Improving Environmental Protection, and for other purposes.

S. 597

At the request of Mr. DODD, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 597, a bill to amend the Public Health Service Act to establish and expand grant programs for evaluation and treatment of parents who are abusers and children of substance abusers, and for other purposes.

S. 601

At the request of Mr. ADAMS, the names of the Senator from Colorado [Mr. WIRTH], and the Senator from New York [Mr. MOYNIHAN] were added as cosponsors of S. 601, a bill to withhold United States military assistance for El Salvador, subject to certain conditions.

S. 643

At the request of Mr. COATS, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 643, a bill to amend the Internal Revenue Code of 1986 to increase the personal exemption for dependent children of a taxpayer who are 6 years old or younger.

S. 701

At the request of Mr. COATS, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 701, a bill to amend the Internal Revenue Code of 1986 to increase the amount of the exemption for dependent children under age 18 to $3,500, and for other purposes.

S. 765

At the request of Mr. BREAUX, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 765, a bill to amend the Internal Revenue Code of 1986 to exclude the imposition of employer Social Security taxes on cash tips.

S. 985

At the request of Mr. SIMON, the names of the Senator from Maine [Mr. COHEN], the Senator from Maryland [Ms. MIKULSKI], the Senator from Maryland [Mr. SARBANES], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 985, a bill to assure the people of the Horn of Africa the right to food and the other basic necessities of life and to promote peace and development in the region.

S. 1044

At the request of Mr. GLENN, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1044, a bill entitled the "Federal Resources Management Act".

S. 1128

At the request of Mr. GLENN, the names of the Senator from New York [Mr. D'AMATO], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Tennessee [Mr. GORE], the Senator from Iowa [Mr. HARKIN], the Senator from Mississippi [Mr. LOTT], the Senator from Rhode Island [Mr. PELL], the Senator from North Carolina [Mr. HELMS], the Senator from Colorado [Mr. WIRTH], the Senator from Massachusetts [Mr. KERRY], the Senator from Arizona [Mr. DECONCINI], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from California [Mr. CRANSTON] were added as cosponsors of S. 1128, a bill to impose sanctions against foreign persons and United States persons that assist foreign countries in acquiring a nuclear explosive device or unsafeguarded special nuclear material, and for other purposes.

S. 1147

At the request of Mr. LIEBERMAN, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1147, a bill to require that the United States Government hold certain discussions and report to Congress with respect to the secondary and tertiary boycotts of Israel by Arab nations.

S. 1157

At the request of Mr. DASCHLE, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 1157, a bill to amend the Internal Revenue Code of 1986 to allow the energy investment credit for solar energy and geothermal property against the entire regular tax and the alternative minimum tax.

S. 1175

At the request of Mr. KERRY, the names of the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of S. 1175, a bill to make eligibility standards for the award of the Purple Heart currently in effect applicable to members of the Armed Forces of the United States who were taken prisoners or taken captive by a hostile foreign government or its agents or a hostile force before April 25, 1962, and for other purposes.

S. 1190

At the request of Mr. DASCHLE, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1190, a bill to amend the Internal Revenue Code of 1986 to increase the standard mileage rate deduction for charitable use of passenger automobiles.

S. 1195

At the request of Mr. DODD, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 1195, a bill to authorize the establishment of a memorial on Federal land in the District of Columbia to honor individuals who have served as volunteers in the Peace Corps.

S. 1226

At the request of Mr. JEFFORDS, the names of the Senator from Kentucky [Mr. FORD] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1226, a bill to direct the Administrator of the Environmental Protection Agency to establish a small community environmental compliance planning program.

S. 1245

At the request of Mr. DASCHLE, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 1245, a bill to amend the Internal Revenue Code of 1986 to clarify that customer base, market share, and other similar intangible items are amortizable.

S. 1269

At the request of Mr. HARKIN, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor

of S. 1269, a bill to require the Secretary of Energy to expedite the development of hydrogen derived from renewable energy sources as an alternative energy system for residential, industrial, utility, and motor vehicle use, and for other purposes.

S. 1270

At the request of Mr. MCCAIN, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of S. 1270, a bill to require the heads of departments and agencies of the Federal Government to disclose information concerning U.S. personnel classified as prisoners of war or missing in action.

S. 1332

At the request of Mr. GRASSLEY, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 1332, a bill to amend title XVIII of the Social Security Act to provide relief to physicians with respect to excessive regulations under the Medicare Program.

S. 1354

At the request of Mr. HARKIN, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 1354, a bill to amend title II of the Social Security Act to increase the amount of remuneration an election official or worker may receive and be excluded from an agreement between a State and the Secretary providing for the extension of benefits under such title to State employees.

S. 1358

At the request of Mr. GRAHAM, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 1358, a bill to amend chapter 17 of title 38, United States Code, to require the Secretary of Veterans Affairs to conduct a hospice care pilot program and to provide certain hospice care services to terminally ill veterans.

S. 1378

At the request of Mr. DIXON, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 1378, a bill to amend the Arms Export Control Act to delay the approval of arms sales, exports, and licensing agreements unless the corresponding memorandum of understanding, before entry into force, has been transmitted to the Congress.

S. 1383

At the request of Mr. MCCAIN, the names of the Senator from Virginia [Mr. ROBB], the Senator from Hawaii [Mr. INOUYE], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 1383, a bill to amend title 10, United States Code, to provide for payment under CHAMPUS of certain health care expenses incurred by members and former members of the uniformed services and their dependents who are entitled to retired or retainer pay and who are otherwise ineligible for such payment by reason of their entitlement to benefits under title XVIII of the Social Security Act because of a disability, and for other purposes.

SENATE JOINT RESOLUTION 160

At the request of Mr. KERRY, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of Senate Joint Resolution 160, a joint resolution designating the week beginning October 20, 1991, as "World Population Awareness Week."

SENATE JOINT RESOLUTION 164

At the request of Mr. GORE, the names of the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Joint Resolution 164, a joint resolution designating the weeks of October 27, 1991, through November 2, 1991, and October 11, 1992, through October 17, 1992, each separately as "National Job Skills Week."

SENATE JOINT RESOLUTION 165

At the request of Mr. CRANSTON, the names of the Senator from Iowa [Mr. GRASSLEY], the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of Senate Joint Resolution 165, a joint resolution to prohibit the proposed sale to the United Arab Emirates of AH-64 Apache attack helicopters.

SENATE CONCURRENT RESOLUTION 37

At the request of Mr. KERRY, the name of the Senator from Washington [Mr. ADAMS] was added as a cosponsor of Senate Concurrent Resolution 37, a concurrent resolution calling for a United States policy of strengthening and maintaining indefinitely the current International Whaling Commission moratorium on the commercial killings of whales, and otherwise expressing the sense of the Congress with respect to conserving and protecting the world's whale, dolphin, and porpoise populations.

SENATE RESOLUTION 144

At the request of Mr. KERRY, the names of the Senator from Rhode Island [Mr. PELL] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of Senate Resolution 144, a resolution to encourage the European Commission to vote to ban drift nets for all European Community fishing fleets on July 8, and for other purposes.

AMENDMENT NO. 383

At the request of Mr. BAUCUS, the names of the Senator from Wyoming [Mr. SIMPSON], the Senator from Montana [Mr. BURNS], the Senator from Colorado [Mr. WIRTH], the Senator from Wyoming [Mr. WALLOP], the Senator from Arizona [Mr. DECONCINI], the Senator from Idaho [Mr. SYMMS], the Senator from Nevada [Mr. REID], and the Senator from Utah [Mr. GARN] were added as cosponsors of Amendment No. 383 intended to be proposed to H.R. 2686, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1992, and for other purposes.

SENATE CONCURRENT RESOLUTION 50—RELATIVE TO THE RESCUE OF APPROXIMATELY 14,000 ETHIOPIAN JEWS

Mr. CRANSTON submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations.

S. CON. RES. 50

Whereas, despite 2,700 years of anti-Semitism, physical destruction, land confiscation, enslavement and forced conversion, Ethiopian Jews, or "Beta Yisrael", have maintained their Jewish heritage and prayed for their return to their biblical homeland;

Whereas, approximately 14,000 Ethiopian Jews have been separated—brother from sister, husband from wife, and parent from child—since the emergency airlifts of Operation Moses and Operation Joshua in 1984 and 1985;

Whereas the Administration carried out its diplomatic negotiations with the Ethiopian Government based on a policy of family reunification and human rights in Ethiopia;

Whereas the lives of Ethiopian Jews waiting to join the families in Israel are imperiled by the Civil War in Ethiopia; and

Whereas several thousand Ethiopian Jews in war zones have not been rescued, and millions of Ethiopians remain at risk because of famine and a civil war that has ravaged that nation for decades: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress that—

(1) President Bush, Administration officials, and the President's emissary should be commended for their involvement in key diplomatic initiatives to secure the timely release of approximately 14,000 Ethiopian Jews;

(2) The Government of Israel should be commended for—

(A) carrying out "Operation Solomon", one of the largest rescues of its kind in history;

(B) its ceaseless diplomatic and humanitarian efforts in reuniting Jews with their families over the course of several years; and

(C) welcoming this beleaguered community with open arms;

(3) dedicated individuals and private voluntary organizations should be applauded for their unflagging support of the Jewish community in Ethiopia; and

(4) the United States should make every effort—

(A) to bring an end to the civil war in Ethiopia;

(B) to increase its support for famine relief so that millions of Ethiopians do not perish; and

(C) to ensure the swift and safe release to Israel of the thousands of Ethiopian Jews still remaining in Ethiopia.

Mr. CRANSTON. Mr. President, I rise today to introduce a concurrent resolution on the miraculous rescue of 14,000 Ethiopian Jews from Ethiopia—Operation Solomon.

It is only appropriate that we commend the groups and individuals who contributed to this marvelous event. The images of Operation Solomon and the stories of this modern day exodus have allowed us all to share in the joy of Ethiopia Jews being reunited with

family members in Israel. Their sense of wonder and relief is palpable.

This resolution is much more than a pat on the back. It is a reminder that more work lies ahead. As formal transition talks begin in Ethiopia next week, we all yearn for a free and peaceful transition to democracy in that beautiful, but troubled, land. We must play an active role in helping this process moved forward.

We must also work to ensure that famine relief reaches the millions of Ethiopians at risk. The civil war has taken its toll and many will die unless relief efforts are increased. In this area, we can lend a hand.

Finally, we must not forget that 3,000 Ethiopian Jews remain in northern Ethiopia and more than 300 are still in Addis Ababa. We must do all we can to ensure their safe passage to Israel. As the Senate chair of the Congressional Caucus for Ethiopian Jewry, I look forward to working with caucus members on this matter in the coming weeks.●

SENATE RESOLUTION 149—CONGRATULATING THE 1ST INFANTRY DIVISION FOR THEIR PERFORMANCE DURING OPERATION DESERT STORM

Mr. DOLE (for himself and Mrs. KASSEBAUM) submitted the following resolution; which was considered and agreed to:

S. RES. 149

Whereas the 1st Infantry Division (Mechanized) was deployed to the Persian Gulf in support of Operation Desert Shield on December 26, 1990.

Whereas over 12,000 soldiers and over 7,000 pieces of equipment were transported from Fort Riley, Kansas to Saudi Arabia in less than sixty days. This deployment included a difficult equipment modernization "on the fly".

Whereas the 1st Infantry Division (Mechanized) arrived in Saudi Arabia trained and ready.

Whereas the 1st Infantry Division, under the brilliant command of General Thomas G. Rhame, spearheaded the armored attack into Iraq on February 24, 1991, traveling over 260 kilometers in less than 100 hours and cut off the path of retreat for the fleeing Iraqi Army.

Whereas during the campaign, the 1st Infantry Division engaged and destroyed all or parts of eleven enemy divisions, including elements of the Republican Guard. The division captured over 11,400 Iraqi prisoners of war—twice as many as any other unit in the Kuwaiti theater of operations.

Whereas the "Big Red One" hosted the historic cease fire meeting between representatives of the allied coalition, led by General H. Norman Schwarzkopf, and the defeated Iraqi Army.

Whereas following the defeat of the Iraqi Army and the cease fire, the 1st Infantry Division continued to clear Iraqi equipment, assisted in the repatriation of Kuwaiti citizens and assisted in relief efforts following the war: Now therefore be it, *Resolved*, That—

(a) The Senate commends all of the soldiers of the 1st Infantry Division for their outstanding devotion to duty, professionalism, and courage under fire throughout Operations Desert Shield and Desert Storm;

(b) The Senate commends Major General Thomas G. Rhame, his staff, and all the commanders and leaders for their superb command, brilliant tactical employment of forces, and outstanding leadership of the "Big Red One".

SENATE RESOLUTION 150—RELATIVE TO THE EXTRADITION OF ALOIS BRUNNER

Mr. MOYNIHAN (for himself, Mr. MACK, Mr. PRESSLER, Ms. MIKULSKI, Mr. MCCAIN, Mr. D'AMATO, Mr. KERREY, Mr. SARBANES, Mr. GRAHAM, Mr. INOUYE, Mr. JOHNSTON, Mr. GRASSLEY, Mr. DECONCINI, Mr. DIXON, Mr. SPECTER, Mr. HARKIN, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, and Mr. HATCH) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 150

Whereas Austrian-born Alois Brunner, who joined the Nazi party at the age of 19, was the deputy and personal secretary to Adolf Eichmann, who was personally responsible for sending to their deaths more than 120,000 Jews from Austria, Germany, France, Slovakia, and Greece;

Whereas in 1938, after Kristallnacht, Brunner joined the Nazi Secret Police and subsequently requested a transfer to the Central Office for Jewish Emigration in Vienna, where he began his career in genocide as Eichmann's personal secretary;

Whereas Brunner helped execute Eichmann's plan for the Final Solution;

Whereas Brunner was particularly brutal toward French Jews, sending to their deaths more than 200 children from Jewish-operated orphanages, including 34 children from Louviciennes;

Whereas in 1954, Brunner was sentenced to death in absentia by French courts in Paris and Marseilles for crimes against humanity;

Whereas since 1955, Brunner has lived in Damascus, Syria, under the protection of the Syrian government and Syrian bodyguards and has assumed the names of Dr. Georg Fisher;

Whereas it is well known that Brunner lives in an apartment at 7 Rue Haddad in Damascus;

Whereas the Syrian government has frequently denied that Brunner lives in Syria; and

Whereas attempts by Austria and Germany to secure Brunner's extradition from Syria have been unsuccessful; Now, therefore, be it hereby

Resolved by the Senate That the Senate urges the President to call on the President of Syria to permit the extradition of the fugitive Nazi war criminal Alois Brunner for trial in Germany.

Mr. MOYNIHAN. Mr. President, we have read recently that the Syrian Government is providing refuge to Nazi war criminal Alois Brunner. In 1954 a French court sentenced Brunner to death in absentia for his activities. Yet, the Syrians have refused Austrian and German extradition requests and provide security guards for Brunner.

Mr. President, there is a certain hideous symbolism in the Syrian Government's decision to shield a man so intimately involved in carrying out the Holocaust. Indeed, to shield a key aide to Adolf Eichmann. It is manifest that this infamous war criminal be brought to justice.

The search for peace in the Middle East will require confidence-building measures which demonstrate the good faith of the Arab States. Accordingly, Syria should immediately agree to extradite Brunner so that he can stand trial for this crimes against humanity.

I rise today with 19 of my colleagues to introduce a resolution calling on the President to urge Syria to permit the extradition of Brunner. I urge all of our colleagues to join us in this effort.

SENATE RESOLUTION 151—RELATIVE TO RESEARCH AND DEVELOPMENT ON HIGH SPEED GROUND TRANSPORTATION

Mr. SPECTER (for himself and Mr. WOFFORD) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 151

Resolved,

The Senate encourages international participation in new technologies for high speed rail and magnetic levitation transportation systems. The Senate further encourages such participation in the development of facilities in the United States for research and manufacturing of these systems.

The Senate anticipates significant future demand for high speed rail and magnetic levitation transportation systems in this country, as well as real opportunities for international joint ventures in the development of these systems.

The Senate encourages continuing positive commercial relations between the United States and Japan, and requests the President to work with the Japanese government to secure international investment in this area.

The Secretary of the Senate shall transmit a copy of this resolution to the President.

AMENDMENTS SUBMITTED

VIOLENT CRIME CONTROL ACT

KASTEN AMENDMENT NO. 433

Mr. Kasten proposed an amendment to the bill (S. 1241) to reduce and control violent crime; as follows:

At the end of the bill, add the following new title:

TITLE —RURAL CRIME PREVENTION STRATEGY

SEC. 01. FINDINGS.

The Congress makes the following findings:

(1) The traditional supportive roles in the family, church, school, and community have declined in importance as a positive social factor influencing the prevention and control of crime in rural areas. As a result in recent years rural areas have experienced a marked increase in crime rates. This increase is taking its toll on rural law enforcement practitioners who are already encumbered by numerous characteristics that are unique to their rural circumstances.

(2) Compounding the increase in crime rates, rural police unlike their urban counterparts, are likely to encounter a multitude of nontraditional police tasks such as fire and railroad emergencies, search and rescue missions, animal control problems, livestock theft, wildlife enforcement, illegal distilleries, illegal crop farming and drug manufacturing, rural drug trafficking, and toxic dumping.

(3) These problems are further exacerbated by the rural officer's distinct disadvantage with respect to the lack of adequate training to manage these varied assignments, the low degree of specialization of job tasks, unique job stress factors, and inadequate data resources. Inadequate rural crime statistics and data analysis capabilities further frustrate the rural police organization's ability to cope with the nature, extent, and trends of rural crime.

(4) Rural law enforcement agencies are at a critical juncture, and strategic planning and action are imperative. The Domestic Chemical Action Group as convened by the National Institute of Justice in October 1990 has recommended that rural police receive training in various safety issues related to the identification, investigation, and seizure of illicit drug and chemical laboratories located in rural areas. Without such specialized training officials will face a high probability of explosions endangering police personnel and the community. National Institute of Justice sponsored research of environmental crime in major urban areas, including Los Angeles, has revealed the lack of police training in the identification, investigation, and clean-up of toxic and hazardous waste areas. It can be said with certainty that this recognized need for hazardous materials training is equally critical for rural police organizations.

SEC. 02. STRATEGY TO ADDRESS RURAL CRIME.

The purpose of this title is to address the growing problems of rural crime in a systematic and effective manner with a program of practical and focused research, development, and dissemination designed to assist States and units of local government in rural areas throughout the country in implementing specific programs and strategies which offer a high probability of improving the functioning of their criminal justice systems.

SEC. 03. NATIONAL INSTITUTE OF JUSTICE NATIONAL ASSESSMENT.

(a) IN GENERAL.—The Director of the National Institute of Justice (referred to in this title as the "Director") shall conduct a national assessment of the nature and extent of rural crime in the United States, the needs of law enforcement and criminal justice professionals in rural States and communities, and promising strategies to respond effectively to those challenges, including—

(1) the problem of clandestine drug laboratories; changing patterns in their location and operation; safety and liability issues for both law enforcement officers and the community in the identification, investigation, seizure, and clean-up of clandestine laboratories;

(2) other environmental crimes, such as the dumping of hazardous and toxic wastes; the pollution of streams, rivers, and ground water; and access of rural communities to the expertise necessary to successfully identify, investigate, and prosecute such crimes;

(3) the cultivation of illegal crops, such as marijuana, including changing patterns in location and techniques for identification, investigation, and destruction;

(4) the problems of drug and alcohol abuse in rural communities, including law enforcement and criminal justice response and access to treatment services;

(5) the problems of family violence and child abuse, including law enforcement and criminal justice response and access to services for victims of such crimes;

(6) the problems of juvenile delinquency and vandalism as they affect rural communities;

(7) the access of law enforcement and criminal justice professionals in rural communities to the services of crime laboratories, the Automated Fingerprint Identification System, and other technological support;

(8) the access of law enforcement and criminal justice professionals in rural communities to professional training and development and the identification of models for the delivery of such training; and

(9) the special problems of drug abuse in jurisdictions with populations of 50,000 or less.

(b) FINAL REPORT.—The Director shall submit the national assessment to the President and Congress not later than 12 months after the date of enactment of this title.

(c) DISSEMINATION OF REPORT.—Based on the results of the national assessment and analysis of successful and promising strategies in these areas, the Director shall disseminate the results not only through reports, publications, and clearinghouse services, but also through programs of training and technical assistance, designed to address the realities and challenges of rural law enforcement.

SEC. 04. PILOT PROGRAMS.

(a) IN GENERAL.—The Director is authorized to make grants to local law enforcement agencies for pilot programs and field tests of particularly promising strategies and models, which could then serve as the basis for demonstration and education programs under the Bureau of Justice Assistance Discretionary Grant Program.

(b) TYPES OF PROGRAMS.—Pilot programs funded under this section may include—

(1) programs to develop and demonstrate new or improved approaches or techniques for rural criminal justice systems;

(2) programs of training and technical assistance to meet the needs of rural law enforcement and criminal justice professionals including safety;

(3) a rural initiative to study and improve the response to traffic safety problems and drug interdiction;

(4) an ongoing program to assist law enforcement professionals in dealing with the hazards of clandestine drug laboratories;

(5) victim assistance information to assist departments in beginning and maintaining strong programs to assist victims and witnesses of crime;

(6) emergency preparedness information for community groups concerned about disaster preparedness on the family and community level; and

(7) program targeted at communities of less than 50,000 stressing the need for production of public safety through extensive partnership efforts between law enforcement, other local government agencies, businesses, schools, community and social organizations, and citizens.

SEC. 05. FUNDING.

There are authorized to be appropriated $5,000,000 to carry out the national assessment and pilot programs required by this title.

KASTEN (AND HATFIELD) AMENDMENT NO. 434

Mr. KASTEN (for himself and Mr. HATFIELD) proposed an amendment to the bill S. 1241, supra, as follows:

At the end of the bill, add the following new title:

TITLE —VIOLENT FELONIES AGAINST THE ELDERLY

SEC. 01. VIOLENT FELONIES AGAINST THE ELDERLY.

(a) IN GENERAL.—Chapter 227 of title 18, United States Code, is amended by adding at the end the following new section:

"§3581. Mandatory sentence for felony against individual of age sixty-five or over

"(a) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of a defendant of a crime of violence under this title, if any victim of such crime is an individual who had attained age sixty-five on or before the date that the offense was committed, the court shall sentence the defendant to imprisonment—

"(1) for a term of not less than one-half of the maximum term of imprisonment provided for such crime under this title, in the case of a first offense to which this section is applicable; and

"(2) for a term of not less than three-fourths of the maximum term of imprisonment provided for such crime under this title, in the case of a Second or subsequent offense to which this section is applicable.

"(b) Notwithstanding any other provision of law, with respect to a sentence imposed under subsection (a) of this section—

"(1) the court shall not suspend such sentence;

"(2) the court shall not give the defendant a probationary sentence;

"(3) no defendant shall be eligible for release on parole before the end of such sentence;

"(4) such sentence shall be served consecutively to any other sentence imposed under this title; and

"(5) the court shall reject any plea agreement which would result in the imposition of a term of imprisonment less than that which would have been imposed under subsection (a) of this section in connection with any charged offense.

"(c) As used in this section, the term—

"(1) 'crime of violence' means—

"(A) a felony that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; or

"(B) a felony that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense; and

"(2) 'victim' means an individual against whom an offense has been or is being committed.".

(b) AMENDMENT TO TABLE OF SECTIONS.—The table of sections for chapter 227 of title 18, United States Code, is amended by adding at the end the following new item:

"3581. Mandatory sentence for felony against individual of age sixty-five or over.".

(c) OTHER TECHNICAL AMENDMENTS.—(1) Section 3731 of title 18, United States Code, is amended by inserting after the second paragraph the following new paragraph:

"An appeal by the United States shall lie to a court of appeals from an otherwise final decision, judgment, or order of a district court sentencing a defendant on the ground

that such sentence is less severe than that required under section 3581 of this title.".

(2) Rule 32(c) of the Federal Rules of Criminal Procedure is amended—

(A) by adding at the end of the first paragraph in paragraph (1) the following new sentence: "Neither the defendant nor the court may waive a presentence investigation and report unless there is in the record information sufficient for the court to determine whether a mandatory sentence must be imposed pursuant to title 18, United States Court, section 3581."; and

(B) in paragraph (2)(D), by inserting after "the offense" the following: "and information relating to whether any victim of the offense had attained age 65 on the date that the offense was committed.".

(3) Rule 11(e)(1) of the Federal Rules of Criminal Procedure is amended by striking out "The" after "IN GENERAL." and inserting in lieu thereof "Except as provided in title 18, United States Code, section 3581, the".

DIXON AMENDMENT NO. 435

Mr. DIXON (for himself and Mr. RIEGLE) proposed an amendment to the bill S. 1241, supra, as follows:

At the end of the bill, add the following:

TITLE —INTERNATIONAL PARENTAL CHILD KIDNAPPING

SEC. 01. OFFENSE.

(a) AMENDMENT OF TITLE 18, UNITED STATES CODE.—(1) Chapter 55 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1204. International parental child kidnapping

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'child' means an individual under the age of sixteen at the time the offense occurred;

"(2) the term 'person' means a parent, putative parent, or family member related to the child victim by blood or marriage;

"(3) the term 'lawful custodian' means—

"(A) an individual or individuals granted legal custody or entitled to physical possession of a child pursuant to a court order; or

"(B) the mother of the child when the parents have not been married to each other, the father's paternity has not been established by a court of law, and no other individual has been granted custody of the child by a court of law;

"(b) Any person who—

"(1) intentionally removes a child from or conceals or detains a child outside the territorial jurisdiction of the United States—

"(A) without the consent of the individual who has been granted sole custody, care, possession, or guardianship of the child;

"(B) for more than 90 days without consent of the other joint custodial parent;

"(C) in violation of a valid court order which prohibits the removal of the child from a local jurisdiction, State, or the United States;

"(D) without the consent of the mother or lawful custodian of the child if the parents have never been married to each other and the father has never established paternity in a court of law;

"(E) during the pendency of a judicial proceeding affecting marriage, custody, or paternity, but prior to the issuance of a temporary or final order determining custody;

"(F) when the child was taken with physical force or the threat of physical force; or

"(G) if the parents of such child are or have been married to each other, or have never been married to each other, but paternity has been established by a court of law, and there has been no court order of custody, and conceals the child for fifteen days outside the jurisdiction of the United States, and fails to make reasonable attempts within the fifteen-day period to notify the other parent of the whereabouts of the child or to arrange reasonable visitation or contact with the child;

"(2) being a parent of the child, instructs another person to remove, conceal, or detain the child when that act when committed by the instructing parent would be a violation of this section; or

"(3) removes a child from or conceals or detains a child outside the territorial jurisdiction of the United States, for payment or promise of payment at the instruction of a person who has not been granted custody of the child by a court of law,

shall be guilty of child kidnapping and shall be fined in accordance with this title or imprisoned not more than three years, or both.

"(d) It shall be an affirmative defense under this section that—

"(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act and was in effect at the time of the offense;

"(2) the defendant was fleeing an incidence or pattern of domestic violence;

"(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

"(e) There is criminal jurisdiction over conduct prohibited by this section if any court in the United States has or could have jurisdiction to determine custody of the child subject to the prohibited conduct pursuant to the Uniform Child Custody Jurisdiction Act.".

(2) The table of sections for chapter 55 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1204. International parental child kidnapping.".

(b) INCREASED PENALTY.—Section 994 of title 28, United States Code, is amended by—

(1) redesignating subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x) as subsections (p), (q), (r), (s), (t), (u), (v), (w), (x), and (y), respectively; and

(2) inserting after subsection (n) the following new subsection:

"(o) The Commission shall ensure that the guidelines reflect the appropriateness of imposing a greater sentence than would otherwise be imposed for an offense under section 1204 of title 18, United States Code, if—

"(1) the defendant abused or neglected the kidnapped child during the removal, concealing, or detaining of the child or placed or caused the child to be placed in the care of another individual who abused or neglected the child;

"(2) the defendant inflicted or threatened to inflict physical harm on the child or on a parent or lawful custodian of the child with the intent to cause such parent or lawful custodian to discontinue criminal prosecution of the defendant under this section;

"(3) the defendant demanded payment in exchange for return of the kidnapped child or demanded that the defendant be relieved of the financial or legal obligation to support the child in exchange for return of the child; or

"(4) the defendant committed the offense while armed with a deadly weapon or the removal of the child resulted in serious bodily injury to another individual.".

SEC. 02. EFFECT OF PRIOR REMOVAL.

If a child was removed from the territorial jurisdiction of the United States prior to the date of enactment of this Act, charges under section 1204 of title 18, United States Code, as added by section 01, may be brought only in cases involving the concealing or deataining of the child in violation of a court order that was in effect at the time of the child's removal from the territorial jurisdiction of the United States.

SEC. 03. RELATION TO THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL PARENTAL CHILD ABDUCTION.

(a) RULE OF CONSTRUCTION.—None of the provisions of this title or amendments made by this title shall be construed to detract from the provisions of the Hague Convention on the Civil Aspects of International Parental Child Abduction, done at the The Hague on October 25, 1980.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that, inasmuch as use of the procedures under the Hague Convention on the Civil Aspects of International Parental Child Abduction has resulted in the return of many children, those procedures, in circumstances in which they are applicable, should be the option of first choice for a parent who seeks the return of a child who has been removed from the parent.

SEC. 04. AUTHORIZATION OF APPROPRIATIONS FOR TRAINING AND EDUCATIONAL PROGRAMS.

There is authorized to be appropriated $250,000 to conduct national, regional, and State training and education programs on criminal and civil aspects of international and interstate parental child abduction under the State Justice Institute Act of 1984 (42 U.S.C. 10701 et seq.).

LEVIN AMENDMENT NO. 436

Mr. LEVIN proposed an amendment to the bill S. 1241, supra, as follows:

On page 162, lines 20 and 21, strike "National Drug Control Policy" and insert "the Bureau of Prisons".

On page 162, line 22, strike "Bureau of Prisons" and insert "National Drug Control Policy".

On page 164, line 11, strike "9" and insert "15".

On page 164, lines 22 through 25 and page 165, line 1, strike "Any person who has been convicted of a criminal offense in any State, or who anticipates entering a plea of guilty of such offense, but who has not yet been sentenced, may apply to be assigned to a boot camp" and insert "The head of a State corrections department or the head's designee may apply for boot camp placement for any person who has been convicted of a criminal offense in that State, or who anticipates entering a plea of quilty of such offense, but who has not yet been sentenced".

On page 165, line 4, strike "counsel for the applicant" and insert "the head of the State corrections department or the head's designee".

On page 165, line 8, strike "14" and insert "30".

On page 166, line 6, strike "if the defendant" and all that follows through line 9 and

insert "if the defendant is eligible for assignment to a boot camp under State law.".

On page 166, strike lines 16 through 24 and insert the following:

(4) Any State referring a prisoner to a boot camp shall reimburse the Bureau of Prisons for the full cost of the incarceration of the prisoner, except that if the prisoner successfully completes the boot camp program, the Bureau of Prisons shall return to the State 20 percent of the amount paid for that prisoner. The total amount returned to each State under this paragraph in each fiscal year shall be used by that State to provide the aftercare supervision and services required by paragraph (e).

On page 166, after line 24, add the following:

(e) POST-RELEASE SUPERVISION.—(1) Any state seeking to refer a State prisoner to a boot camp prison shall submit to the Director of the Bureau of Prisons an aftercare plan setting forth the provisions that the State will make for the continued supervision of the prisoner following release. The aftercare plan shall also contain provisions for educational and vocational training and drug or other counseling and treatment where appropriate.

(2) The Bureau of Prisons shall develop an aftercare plan setting forth the provisions that will be made for the continued supervision of Federal prisoners following release. The aftercare plan shall also contain provisions for educational and vocational training and drug or other counseling and treatment where appropriate.

On page 167, line 1, strike "(e)" and insert "(f)".

One page 167, line 3, after "1992" insert ", available until expended,".

ROTH AMENDMENT NOS. 437 AND 438

(Ordered to lie on the table.)

Mr. ROTH submitted two amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT NO. 437

On page 114, strike all on lines 22 through 26.

AMENDMENT NO. 438

At the end of the bill, add the following:

TITLE —ENVIRONMENTAL COMPLIANCE

SEC. 01. ENVIRONMENTAL COMPLIANCE.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 33 the following new chapter:

"CHAPTER 34—ENVIRONMENTAL COMPLIANCE

"731. Environmental compliance audit.
"732. Definition.

"§ 731. Environmental compliance audit

"(a) IN GENERAL.—A court of the United States—

"(1) shall, when sentencing an organization for an environmental offense that is a felony; and

"(2) may, when sentencing an organization for a misdemeanor environmental offense,

require that the organization pay for an environmental compliance audit.

"(b) APPOINTMENT OF INDEPENDENT EXPERT.—The court shall appoint an independent expert—

"(1) with no prior involvement in the environmental management of the organization sentenced to conduct an environmental compliance audit under this section; and

"(2) who has demonstrated abilities to properly conduct such audits.

"(c) CONTENTS OF COMPLIANCE AUDIT.—(1) An environmental compliance audit shall—

"(A) identify all causes of and factors that contributed to the increased risk relating to the offense;

"(B) recommend specific measures that should be taken to prevent a recurrence of those causes and factors; and

"(C) recommend a schedule for implementation of the measures described in subparagraph (B).

"(2) An environmental compliance audit shall not recommend measures under paragraph (1)(B) that would require the violation of an environmental statute, regulation, or permit.

"(d) CONFIDENTIALITY OF INFORMATION.—(1) Any records, reports, or information obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the court by any person that records, reports, or information, or particular parts thereof (other than health or safety effects data) to which the court shall access under this section if made public would divulge information entitled to protection under section 1905 of this title, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section, or when relevant in any proceeding under this section.

"(2) In submitting data under this section, a person required to provide such data may—

"(A) designate the data which such person believes is entitled to protection under this subsection; and

"(B) submit such designated data separately from other data submitted under this section.

A designation under this subsection shall be made in writing and in such manner as the court may order.

"(e) COURT-ORDERED IMPLEMENTATION OF COMPLIANCE AUDIT.—(1) The court shall order the defendant to implement the recommendations of the environmental compliance audit after considering the factors described in paragraph (2).

"(2) In considering the extent to which the recommendation of an environmental compliance audit will be required to be implemented, the court shall consider whether—

"(A) the recommendation will achieve the result that the recommendation seeks to bring about;

"(B) the environmental benefits of implementing the recommendation outweigh any adverse environmental effects;

"(C) the technology exists to carry out the recommendation;

"(D) remedial or mitigative action has already achieved the results the recommendation seeks to bring about; and

"(E) in the case of a recommendation under any of paragraphs (2) through (4) of subsection (c), there is another means to achieve the equivalent result at less cost to the defendant.

"(f) EXTENSION OF PERMISSIBLE TERM OF PROBATION.—In a case where an environmental compliance audit is ordered, the court may impose a term of probation that is longer than the term otherwise permitted by law if the court determines that the longer term is necessary to implement the environmental compliance audit.

"(g) SANCTIONS FOR FAILURE TO IMPLEMENT COMPLIANCE AUDIT.—In addition to any other sanctions the court may impose for failure to implement an environmental compliance audit, the court may—

"(1) hold any appropriate party in contempt; or

"(2) appoint a special master to conduct the relevant affairs of the defendant.

"(h) ADDITIONAL STANDING TO RAISE FAILURE TO IMPLEMENT COMPLIANCE AUDIT; BURDEN OF PROOF.—(1) The prosecutor, auditor, or any governmental agency may present evidence to the court that a defendant has failed to fully implement an environmental compliance audit.

"(2) When evidence of failure to implement an environmental compliance audit is presented pursuant to paragraph (1), the court shall consider all relevant evidence and, if the court determines that the defendant has not fully implemented the environmental compliance audit, order appropriate sanctions.

"§ 732. Definition

"For the purposes of this chapter, the term 'environmental offense' means a criminal violation of—

"(1) the Clean Air Act (42 U.S.C. 7401 et seq.);

"(2) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (commonly known as the Clean Water Act);

"(3) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(4) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

"(5) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

"(6) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(7) title XIV of the Public Health Service Act (42 U.S.C. 300f et seq.) (commonly known as the Safe Drinking Water Act);

"(8) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

"(9) the Lacey Act; and

"(10) the Emergency Planning and Community Right-To-Know Act of 1986.".

(b) TECHNICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 33 the following new item:

"34. Environmental compliance. ..... 741".

(c) RULE OF CONSIDERATION.—The amendments made by this Act shall not be construed as preempting regulation by the States of any activities that may have an effect on the environment.

WIRTH AMENDMENT NO. 439

(Ordered to lie on the table.)

Mr. WIRTH submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place in the bill, insert the following new title:

TITLE —PUBLIC INFORMATION CONCERNING FAILED DEPOSITORY INSTITUTIONS

SEC. 01. AVAILABILITY OF EXAMINATION REPORTS.

(a) PUBLIC AVAILABILITY OF INFORMATION.—The appropriate Federal banking agency shall publish and make available to the public reports of all examinations of each institution described in section 04, or of a holding company of such institution, that was performed by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Cor-

poration, or any predecessor thereof, during the 5-year period preceding the transfer, failure, or receipt of funds described in section 04.

(b) DELAY OF PUBLICATION.—If the appropriate Federal banking agency makes a determination in writing that publication of an examination report would seriously threaten the safety or soundness of an insured depository institution, such agency may delay publication of the examination report for a reasonable period of time, not to exceed 6 months from the date of the transfer, failure, or receipt of funds described in section 04.

SEC. 02. PROHIBITION OF CONFIDENTIAL SETTLEMENTS.

Notwithstanding any other provision of law or any rule, regulation, or order issued thereunder, all agreements or settlements of claims between the Resolution Trust Corporation or the Federal Deposit Insurance Corporation and any other party, where such agreement or claim relates to an institution described in section 04, shall be published and made available to the public.

SEC. 03. APPLICABILITY.

The requirements of section 01 shall apply—

(1) to any insured depository institution that has had its assets or liabilities, or any part thereof, transferred to the FSLIC Resolution Fund or the Resolution Trust Corporation; and

(2) to any member of the Bank Insurance Fund, if during the fiscal year that the institution has either failed or received funds, as defined in section 04, the Bank Insurance Fund—

(A) has outstanding loans, or has otherwise received funds, from the Department of the Treasury, the Federal Financing Bank, or any Federal Reserve Bank; or

(B) has a negative fund balance; and

(3) to any member of the Savings Association Insurance Fund, if during the fiscal year that the institution has either failed or received funds, as defined in section 04, the Savings Association Insurance Fund—

(A) has outstanding loans, or has otherwise received funds, from the Department of the Treasury, the Federal Financing Bank, or any Federal Reserve Bank; or

(B) has a negative fund balance.

SEC. 04. DEFINITIONS.

For purposes of this title—

(1) an insured depository institution has "failed" if—

(A) the Federal Deposit Insurance Corporation or the Resolution Trust Corporation—

(i) has been appointed as conservator or receiver for such institution; or

(ii) has exercised the power to provide assistance under section 13(c) of the Federal Deposit Insurance Act or section 21A of the Federal Home Loan Bank Act; or

(B) a bridge bank has been established under section 11(i) of the Federal Deposit Insurance Act;

(2) an insured depository institution has "received funds" if the institution, its holding company, or an acquiring institution receives cash or other valuable consideration from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation, whether in the form of a loan, a payment to depositors or other creditors, the assumption of liabilities, or otherwise; and

(3) the term "insured depository institution" shall have the same meaning as in section 3 of the Federal Deposit Insurance Act.

SEYMOUR AMENDMENT NO. 440

Mr. SEYMOUR proposed an amendment to the bill S. 1241, supra, as follows:

At the appropriate place, insert the following:

SEC. . DEFINITION OF SERIOUS DRUG OFFENSE.

Section 924(e)(2)(A) of title 18, United States Code, is amended by—

(1) adding "or" at the end of clause (ii); and

(2) adding at the end thereof the following new clause:

"(iii) an offense under State law which, if it had been prosecuted as a violation of the Controlled Substances Act as that Act provided at the time of the offense, would have been punishable by a maximum term of ten years or more;".

LEVIN (AND OTHERS) AMENDMENT NO. 441

(Ordered to lie on the table.)

Mr. LEVIN (for himself, Mr. SIMON, Mr. MOYNIHAN, and Mr. KERRY) submitted an amendment intended to be proposed by them to the bill S. 1241, supra, as follows:

AMENDMENT NO. 441

At the appropriate place insert the following new section:

SEC. . HOSPITAL EMERGENCY DEPARTMENT GRANTS.

The Public Health Service Act is amended by inserting after section 330 (42 U.S.C. 254c) the following new section:

"SEC. 330A. GRANTS FOR UNCOMPENSATED COSTS OF HOSPITAL EMERGENCY DEPARTMENTS OPERATING IN AREAS IMPACTED BY DRUG-RELATED ILLNESS AND VIOLENCE.

"(a) ESTABLISHMENT.—The Secretary shall make grants to eligible hospitals to assist the hospitals in paying for the uncompensated costs of providing emergency department services.

"(b) APPLICATION.—To be eligible to receive a grant under subsection (a), a hospital shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary determines to be necessary to carry out such subsection.

"(c) ELIGIBILITY.—Hospitals eligible to receive a grant under subsection (a) shall be hospitals in areas that have emergency departments that—

"(1) have incurred substantial uncompensated costs in providing emergency department services in areas with a significant incidence of illness and violence arising from the abuse of drugs;

"(2) serve, during the period of the grant, a patient population that includes a significant number of patients who are treated for drug abuse or wounds resulting from drug-related violent crimes; and

"(3) have an emergency department volume of not less than 20,000 patient visits per year.

"(d) PRIORITY.—The Secretary shall give priority to those grant applicants that submit plans to indicate that they have in place or are developing a data collection system on violence and substance abuse related injuries. A portion of the grant may be used to support such a system.

"(e) LIMITATION ON DURATION OF SUPPORT.—The period during which a hospital receives payments under subsection (a) may not exceed 3 fiscal years, except that the Secretary may waive such requirement and authorize a hospital to receive such payments for 1 additional year.

"(f) REGULATION.—Not later than 6 months after the date of the enactment of this section, the Secretary shall promulgate regulations to carry out this section.

"(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $200,000,000 for fiscal year 1992, $225,000,000 for fiscal year 1993, and $250,000,000 for fiscal year 1994.".

KERRY AMENDMENT NOS. 442 THROUGH 444

(Ordered to lie on the table.)

Mr. KERRY submitted three amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT NO. 442

At the appropriate place, insert the following new section:

SEC. . Chapter 3 of the Arms Export Control Act (22 U.S.C. 2751 et seq.) is amended by adding at the end thereof the following:

"SEC. 40A. EXPORTS TO MAJOR ILLICIT DRUG-PRODUCING AND MAJOR DRUG-TRANSIT COUNTRIES.—(a)(1) Except as provided in paragraph (2), and notwithstanding section 38 of this Act, weapons designated as assault weapons under this section may not be exported to any country which is a major illicit drug-producing country or major drug-transit country.

"(2) The prohibition in subsection (a) shall not apply to lawful exports to the governments of major illicit drug-producing countries or major drug-transit countries.

"(3) For purposes of this subsection, the terms 'major illicit drug producing country' and 'major drug-transit country' shall have the same meaning as are given to such terms by paragraph (2) and (5) of section 481(i) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(i)).

"(b) For purposes of this section, the term 'assault weapon' means all firearms designated as assault weapons in this subsection and all other semi-automatic firearms which are determined by the Secretary of the Treasury, in consultation with the Attorney General, to be assault weapons, as provided by this section. Such terms shall include, in addition to any other firearm identified by the Secretary, all versions of the following, including any combination of parts from which any such firearm can be assembled, firearms sold under the designation provided in this subsection and firearms which are identical, sold under any designation:

"(1) Auto-Ordnance Thompson models 1927 and M-1;

"(2) Armalite AR-180;

"(3) Calico M-900;

"(4) Encom Mark IV, MP-9, and MP-45;

"(5) Heckler and Koch HK-91, HK-93, and HK-94;

"(6) Norinco, Mitchell, and Polytechnologies Avtomat Kalashnikovs (all models);

"(7) Action Arms Israeli Military Industries UZI and Galil;

"(8) Beretta AR-70 (SC-70);

"(9) Colt AR-15 and CAR-15;

"(10) Fabrique Nationale FN/FAL, FN/LAR, and FNC;

"(11) MAC 10 and MAC 11;

"(12) Steyr AUG;

"(13) Intratec TEC-9;

"(14) Streetsweeper and Striker 12; and

"(15) Any weapon which is denied importation to the United States by the Bureau of Alcohol, Tobacco and Firearms.

AMENDMENT NO. 443

At the appropriate place in the bill, insert the following new section:

SEC. . (a) Recognizing that drug and alcohol abuse are significant contributing factors to violent crime in the United States, it shall be the policy of the United States to provide all citizens who suffer from drug abuse or alcoholism with access on demand to drug abuse and alcoholism treatment facilities.

(b) The Secretary of Health and Human Services is authorized to issue appropriate regulations in furtherance of the policy set forth in this Section.

(c) The Secretary of Health and Human Services shall provide a Report to the Congress on February 1, 1992, which sets forth a plan by which the policy set forth in this Section shall be fully implemented during fiscal year 1993.

AMENDMENT NO. 444

At the appropriate place in the bill, insert the following new section:

SEC. . Sense of the Senate. Recognizing that drug and alcohol abuse are significant contributing factors to violent crime in the United States, it is the Sense of the Senate that the United States should provide all citizens who suffer from drug abuse or alcoholism with access on demand to drug abuse and alcoholism treatment facilities.

BENTSEN AMENDMENT NOS. 445 THROUGH 447

(Ordered to lie on the table.)

Mr. BENTSEN submitted three amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT NO. 445

On page 94, strike lines 19 through 23.

AMENDMENT NO. 446

On page 143, strike lines 14 through 23.

AMENDMENT NO. 447

On page 145, beginning with line 8, strike all through page 148, line 3.

BIDEN AMENDMENT NOS. 448 THROUGH 458

(Ordered to lie on the table.)

Mr. BIDEN submitted 11 amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT NO. 448

Add at the appropriate place in the bill:

TITLE I—SAFER STREETS AND NEIGHBORHOODS

SEC. 101. SHORT TITLE.

This title may be cited as the "Safer Streets and Neighborhoods Act of 1991".

SEC. 102. GRANTS TO STATE AND LOCAL AGENCIES.

Paragraph (5) of section 1001(a) of part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"(5) There are authorized to be appropriated $1,000,000,000 for fiscal year 1992 and such sums as may be necessary in fiscal years 1993 and 1994 to carry out the programs under parts D and E of this title.".

SEC. 103. CONTINUATION OF FEDERAL STATE FUNDING FORMULA.

Section 504(a)(1) of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by section 211 of the Department of Justice Appropriations Act, 1990 (Public Law 101-162) and section 601 of the Crime Control Act of 1990 (Public Law 101-647), is amended by striking "1991" and inserting "1992".

Add at the appropriate place in the bill:

TITLE VIII—POLICE CORPS AND LAW ENFORCEMENT TRAINING AND EDUCATION ACT

SEC. 801. SHORT TITLE.

This title may be cited as the "Police Corps and Law Enforcement Training and Education Act".

SEC. 802. PURPOSES.

The purposes of this title are to—

(1) address violent crime by increasing the number of police with advanced education and training on community patrol;

(2) provide educational assistance to law enforcement personnel and to students who possess a sincere interest in public service in the form of law enforcement; and

(3) assist State and local law enforcement efforts to enhance the educational status of law enforcement personnel both through increasing the educational level of existing officers and by recruiting more highly educated officers.

SEC. 803. ESTABLISHMENT OF OFFICE OF THE POLICE CORPS AND LAW ENFORCEMENT EDUCATION.

(a) ESTABLISHMENT.—There is established in the Department of Justice, under the general authority of the Attorney General, an Office of the Police Corps and Law Enforcement Education.

(b) APPOINTMENT OF DIRECTOR.—The Office of the Police Corps and Law Enforcement Education shall be headed by a Director (referred to in this title as the "Director") who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) RESPONSIBILITIES OF DIRECTOR.—The Director shall be responsible for the administration of the Police Corps program established in subtitle A and the Law Enforcement Scholarship program established in subtitle B and shall have authority to promulgate regulations to implement this title.

SEC. 804. DESIGNATION OF LEAD AGENCY AND SUBMISSION OF STATE PLAN.

(a) LEAD AGENCY.—A State that desires to participate in the Police Corps program under subtitle A or the Law Enforcement Scholarship program under subtitle B shall designate a lead agency that will be responsible for—

(1) submitting to the Director a State plan described in subsection (b); and

(2) administering the program in the State.

(b) STATE PLANS.—A State plan shall—

(1) contain assurances that the lead agency shall work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement interagency agreements designed to carry out the program;

(2) contain assurances that the State shall advertise the assistance available under this title;

(3) contain assurances that the State shall screen and select law enforcement personnel for participation in the program;

(4) if the State desires to participate in the Police Corps program under subtitle A, meet the requirements of section 816; and

(5) if the State desires to participate in the Law Enforcement Scholarship program under subtitle B, meet the requirements of section 826.

Subtitle A—Police Corps Program

SEC. 811. DEFINITIONS.

For the purposes of this subtitle—

(1) the term "academic year" means a traditional academic year beginning in August or September and ending in the following May or June;

(2) the term "dependent child" means a natural or adopted child or stepchild of a law enforcement officer who at the time of the officer's death—

(A) was no more than 21 years old; or

(B) if older than 21 years, was in fact dependent on the child's parents for at least one-half of the child's support (excluding educational expenses), as determined by the Director;

(3) the term "educational expenses" means expenses that are directly attributable to—

(A) a course of education leading to the award of the baccalaureate degree; or

(B) a course of graduate study following award of a baccalaureate degree, including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses;

(4) the term "participant" means a participant in the Police Corps program selected pursuant to section 813;

(5) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands; and

(6) the term "State Police Corps program" means a State police corps program approved under section 816.

SEC. 812. SCHOLARSHIP ASSISTANCE.

(a) SCHOLARSHIPS AUTHORIZED.—(1) The Director is authorized to award scholarships to participants who agree to work in a State or local police force in accordance with agreements entered into pursuant to subsection (d).

(2)(A) Except as provided in subparagraph (B) each scholarship payment made under this section for each academic year shall not exceed—

(i) $10,000; or

(ii) the cost of the educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed $13,333.

(C) The total amount of scholarship assistance received by any one student under this section shall not exceed $40,000.

(4) Recipients of scholarship assistance under this section shall continue to receive such scholarship payments only during such periods as the Director finds that the recipient is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending.

(5)(A) The Director shall make scholarship payments under this section directly to the institution of higher education that the student is attending.

(B) Each institution of higher education receiving a payment on behalf of a participant pursuant to subparagraph (A) shall remit to such student any funds in excess of the costs of tuition, fees, and room and board payable to the institution

(b) REIMBURSEMENT AUTHORIZED.—(1) The Director is authorized to make payments to a participant to reimburse such participant for the costs of educational expenses if such student agrees to work in a State or local police force in accordance with the agree-

ment entered into pursuant to subsection (d).

(2)(A) Each payment made pursuant to paragraph (1) for each academic year of study shall not exceed—

(i) $10,000; or

(ii) the cost of educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed $13,333.

(C) The total amount of payments made pursuant to subparagraph (A) to any one student shall not exceed $40,000.

(c) USE OF SCHOLARSHIP.—Scholarships awarded under this subsection shall only be used to attend a 4-year institution of higher education.

(d) AGREEMENT.—(1) Each participant receiving a scholarship or a payment under this section shall enter into an agreement with the Director. Each such agreement shall contain assurances that the participant shall—

(A) after successful completion of a baccalaureate program and training as prescribed in section 814, work for 4 years in a State or local police force without there having arisen sufficient cause for the participant's dismissal under the rules applicable to members of the police force of which the participant is a member;

(B) complete satisfactorily—

(i) an educational course of study and receipt of a baccalaureate degree (in the case of undergraduate study) or the reward of credit to the participant for having completed one or more graduate courses (in the case of graduate study);

(ii) Police Corps training and certification by the Director that the participant has met such performance standards as may be established pursuant to section 814; and

(C) repay all of the scholarship or payment received plus interest at the rate of 10 percent in the event that the conditions of subparagraphs (A) and (B) are not complied with.

(2)(A) A recipient of a scholarship or payment under this section shall not be considered in violation of the agreement entered into pursuant to paragraph (1) if the recipient—

(i) dies; or

(ii) becomes permanently and totally disabled as established by the sworn affidavit of a qualified physician.

(B) In the event that a scholarship recipient is unable to comply with the repayment provision set forth in subparagraph (B) of paragraph (1) because of a physical or emotional disability or for good cause as determined by the Director, the Director may substitute community service in a form prescribed by the Director for the required repayment.

(C) The Director shall expeditiously seek repayment from participants who violate the agreement described in paragraph (1).

(e) DEPENDENT CHILD.—A dependent child of a law enforcement officer—

(1) who is a member of a State or local police force or is a Federal criminal investigator or uniformed police officer,

(2) who is not a participant in the Police Corps program, but

(3) who serves in a State for which the Director has approved a Police Corps plan, and

(4) who is killed in the course of performing police duties,

shall be entitled to the scholarship assistance authorized in this section. Such dependent child shall not incur any repayment obligation in exchange for the scholarship assistance provided in this section.

(f) GROSS INCOME.—For purposes of section 61 of the Internal Revenue Code of 1986, a participant's or dependent child's gross income shall not include any amount paid as scholarship assistance under this section or as a stipend under section 814.

(g) APPLICATION.—Each participant desiring a scholarship or payment under this section shall submit an application as prescribed by the Director in such manner and accompanied by such information as the Director may reasonably require.

(h) DEFINITION.—For the purposes of this section the term "institution of higher education" has the meaning given that term in the first sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

SEC. 813. SELECTION OF PARTICIPANTS.

(a) IN GENERAL.—Participants in State Police Corps programs shall be selected on a competitive basis by each State under regulations prescribed by the Director.

(b) SELECTION CRITERIA AND QUALIFICATIONS.—(1) In order to participate in a State Police Corps program, a participant must—

(A) be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(B) meet the requirements for admission as a trainee of the State or local police force to which the participant will be assigned pursuant to section 815(c)(5), including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the State or local police shall not disqualify the applicant if the applicant will be of sufficient age upon completing an undergraduate course of study;

(C) possess the necessary mental and physical capabilities and emotional characteristics to discharge effectively the duties of a law enforcement officer;

(D) be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(E) in the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree and will then accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State;

(F) in the case of a participant desiring to undertake or continue graduate study, agree in writing that the participant will accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State before undertaking or continuing graduate study;

(G) contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve for 4 years as an officer in the State police or in a local police department, if an appointment is offered; and

(H) except as provided in paragraph (2), be without previous law enforcement experience.

(2)(A) Until the date that is 5 years after the date of enactment of this title, up to 10 percent of the applicants accepted into the Police Corps program may be persons who—

(i) have had some law enforcement experience; and

(ii) have demonstrated special leadership potential and dedication to law enforcement.

(B)(i) The prior period of law enforcement of a participant selected pursuant to subparagraph (A) shall not be counted toward satisfaction of the participant's 4-year service obligation under section 815, and such a participant shall be subject to the same benefits and obligations under this subtitle as other participants, including those stated in section (b)(1) (E) and (F).

(ii) Clause (i) shall not be construed to preclude counting a participant's previous period of law enforcement experience for purposes other than satisfaction of the requirements of section 815, such as for purposes of determining such a participant's pay and other benefits, rank, and tenure.

(3) It is the intent of this Act that there shall be no more than 20,000 participants in each graduating class. The Director shall approve State plans providing in the aggregate for such enrollment of applicants as shall assure, as nearly as possible, annual graduating classes of 20,000. In a year in which applications are received in a number greater than that which will produce, in the judgment of the Director, a graduating class of more than 20,000, the Director shall, in deciding which applications to grant, give preference to those who will be participating in State plans that provide law enforcement personnel to areas of greatest need.

(c) RECRUITMENT OF MINORITIES.—Each State participating in the Police Corps program shall make special efforts to seek and recruit applicants from among members of racial and ethnic groups whose representation on the police forces within the State is substantially less than in the population of the State as a whole. This subsection does not authorize an exception from the competitive standards for admission established pursuant to subsections (a) and (b).

(d) ENROLLMENT OF APPLICANT.—(1) An applicant shall be accepted into a State Police Corps program on the condition that the applicant will be matriculated in, or accepted for admission at, a 4-year institution of higher education (as described in the first sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)))—

(A) as a full-time student in an undergraduate program; or

(B) for purposes of taking a graduate course.

(2) If the applicant is not matriculated or accepted as set forth in paragraph (1), the applicant's acceptance in the program shall be revoked.

(e) LEAVE OF ABSENCE.—(1) A participant in a State Police Corps program who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) due to temporary physical or emotional disability shall be granted such leave of absence by the State.

(2) A participant who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) for any reason other than those listed in paragraph (1) may be granted such leave of absence by the State.

(f) ADMISSION OF APPLICANTS.—An applicant may be admitted into a State Police Corps program either before commencement of or during the applicant's course of educational study.

SEC. 814. POLICE CORPS TRAINING.

(a) IN GENERAL.—(1) The Director shall establish programs of training for Police Corps participants. Such programs may be carried out at up to 3 training centers established for this purpose and administered by the Director, or by contracting with existing State training facilities. The Director shall con-

tract with a State training facility upon request of such facility if the Director determines that such facility offers a course of training substantially equivalent to the Police Corps training program described in this subtitle.

(2) The Director is authorized to enter into contracts with individuals, institutions of learning, and government agencies (including State and local police forces), to obtain the services of persons qualified to participate in and contribute to the training process.

(3) The Director is authorized to enter into agreements with agencies of the Federal Government to utilize on a reimbursable basis space in Federal buildings and other resources.

(4) The Director may authorize such expenditures as are necessary for the effective maintenance of the training centers, including purchases of supplies, uniforms, and educational materials, and the provision of subsistence, quarters, and medical care to participants.

(b) TRAINING SESSIONS.—A participant in a State Police Corps program shall attend two 8-week training sessions at a training center, one during the summer following completion of sophomore year and one during the summer following completion of junior year. If a participant enters the program after sophomore year, the participant shall complete 16 weeks of training at times determined by the Director.

(c) FURTHER TRAINING.—The 16 weeks of Police Corps training authorized in this section is intended to serve as basic law enforcement training but not to exclude further training of participants by the State and local authorities to which they will be assigned. Each State plan approved by the Director under section 816 shall include assurances that following completion of a participant's course of education each participant shall receive appropriate additional training by the State or local authority to which the participant is assigned. The time spent by a participant in such additional training, but not the time spent in Police Corps training, shall be counted toward fulfillment of the participant's 4-year service obligation.

(d) COURSE OF TRAINING.—The training sessions at training centers established under this section shall be designed to provide basic law enforcement training, including vigorous physical and mental training to teach participants self-discipline and organizational loyalty and to impart knowledge and understanding of legal processes and law enforcement.

(e) EVALUATION OF PARTICIPANTS.—A participant shall be evaluated during training for mental, physical, and emotional fitness, and shall be required to meet performance standards prescribed by the Director at the conclusion of each training session in order to remain in the Police Corps program.

(f) STIPEND.—The Director shall pay participants in training sessions a stipend of $250 a week during training.

SEC. 815. SERVICE OBLIGATION.

(a) SWEARING IN.—Upon satisfactory completion of the participant's course of education and training program established in section 814 and meeting the requirements of the police force to which the participant is assigned, a participant shall be sworn in as a member of the police force to which the participant is assigned pursuant to the State Police Corps plan, and shall serve for 4 years as a member of that police force.

(b) RIGHTS AND RESPONSIBILITIES.—A participant shall have all of the rights and responsibilities of and shall be subject to all rules and regulations applicable to other members of the police force of which the participant is a member, including those contained in applicable agreements with labor organizations and those provided by State and local law.

(c) DISCIPLINE.—If the police force of which the participant is a member subjects the participant to discipline such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 812, the Director may, upon a showing of good cause, permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 812(d)(1)(C) shall not apply.

SEC. 816. STATE PLAN REQUIREMENTS.

A State Police Corps plan shall—

(1) provide for the screening and selection of participants in accordance with the criteria set out in section 813;

(2) state procedures governing the assignment of participants in the Police Corps program to State and local police forces (no more than 10 percent of all the participants assigned in each year by each State to be assigned to a statewide police force or forces);

(3) provide that participants shall be assigned to those geographic areas in which—

(A) there is the greatest need for additional law enforcement personnel; and

(B) the participants will be used most effectively;

(4) provide that to the extent consistent with paragraph (3), a participant shall be assigned to an area near the participant's home or such other place as the participant may request;

(5) provide that to the extent feasible, a participant's assignment shall be made at the time the participant is accepted into the program, subject to change—

(A) prior to commencement of a participant's fourth year of undergraduate study, under such circumstances as the plan may specify; and

(B) from commencement of a participant's fourth year of undergraduate study until completion of 4 years of police service by participant, only for compelling reasons or to meet the needs of the State Police Corps program and only with the consent of the participant;

(6) provide that no participant shall be assigned to serve with a local police force—

(A) whose size has declined by more than 5 percent since June 21, 1989; or

(B) which has members who have been laid off but not retired;

(7) provide that participants shall be placed and to the extent feasible kept on community and preventive patrol;

(8) assure that participants will receive effective training and leadership;

(9) provide that the State may decline to offer a participant an appointment following completion of Federal training, or may remove a participant from the Police Corps program at any time, only for good cause (including failure to make satisfactory progress in a course of educational study) and after following reasonable review procedures stated in the plan; and

(10) provide that a participant shall, while serving as a member of a police force, be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other police officers of the same rank and tenure in the police force of which the participant is a member.

SEC. 817. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subtitle $400,000,000 for fiscal year 1992 and such sums as are necessary to carry out the subtitle for fiscal years 1993, 1994, 1995, and 1996.

Subtitle B—Law Enforcement Scholarship Program

SEC. 821. DEFINITIONS.

As used in this subtitle—

(1) the term "educational expenses" means expenses that are directly attributable to—

(A) a course of education leading to the award of an associate degree;

(B) a course of education leading to the award of a baccalaureate degree; or

(C) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies and related expenses;

(2) the term "institution of higher education" has the meaning given that term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a));

(3) the term "law enforcement position" means employment as an officer in a State or local police force, or correctional institution; and

(4) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

SEC. 822. ALLOTMENT.

From amounts appropriated under the authority of section 829, the Director shall allocate—

(1) 80 percent of such funds to States on the basis of the number of law enforcement officers in each State; and

(2) 20 percent of such funds to States on the basis of the State's shortage of law enforcement personnel and the need for assistance under this subtitle.

SEC. 823. PROGRAM ESTABLISHED.

(a) IN GENERAL.—From amounts available pursuant to section 822 each State shall pay the Federal share of the cost of awarding scholarships to in-service law enforcement personnel to enable such personnel to seek further education.

(b) FEDERAL SHARE.—(1) The Federal share of the cost of scholarships under this subtitle shall not exceed 60 percent.

(2) The non-Federal share of the cost of scholarships under this subtitle shall be supplied from sources other than the Federal Government.

(c) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall be responsible for the administration of the program conducted pursuant to this subtitle and shall, in consultation with the Assistant Secretary for Postsecondary Education, promulgate regulations to implement this subtitle.

(d) SPECIAL RULE.—Each State receiving an allotment under section 823 shall ensure that each scholarship recipient under this subtitle be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other law enforcement personnel of the same rank and tenure in the office of which the scholarship recipient is a member.

(e) SUPPLEMENTATION OF FUNDING.—Funds received under this subtitle shall only be used to supplement, and not to supplant, Federal, State, or local efforts for recruitment and education of law enforcement personnel.

SEC. 824. SCHOLARSHIPS.

(a) PERIOD OF AWARD.—Scholarships awarded under this subtitle shall be for a period of one academic year.

(b) USE OF SCHOLARSHIPS.—Each individual awarded a scholarship under this subtitle may use such scholarship for educational expenses at any accredited institution of higher education.

SEC. 825. ELIGIBILITY.

An individual shall be eligible to receive a scholarship under this subtitle if such individual has been employed in law enforcement for 2 years immediately preceding the date for which assistance is sought.

SEC. 826. STATE PLAN REQUIREMENTS.

A State law enforcement scholarship plan shall—

(1) contain assurances that the State shall make scholarship payments to institutions of higher education on behalf of individuals receiving financial assistance under this subtitle;

(2) identify model curriculum and existing programs designed to meet the educational and professional needs of law enforcement personnel;

(3) contain assurances that the State shall promote cooperative agreements with educational and law enforcement agencies to enhance law enforcement personnel recruitment efforts in high schools and community colleges; and

(4) contain assurances that the State shall not expend for administrative expenses more than 8 percent of Federal funds received under section 823.

SEC. 827. LOCAL APPLICATION.

(a) IN GENERAL.—Each individual desiring a scholarship under this subtitle shall submit an application to the State at such time, in such manner, and accompanied by such information as the State may reasonably require. Each such application shall describe the academic courses for which financial assistance is sought.

(b) PRIORITY.—In awarding scholarships under this subtitle, each State shall give priority to applications from individuals who are—

(1) members of racial, ethnic, or gender groups whose representation in the law enforcement agencies within the State is substantially less than in the population eligible for employment in law enforcement in the State; and

(2) pursuing an undergraduate degree.

SEC. 828. SCHOLARSHIP AGREEMENT.

(a) IN GENERAL.—Each individual receiving a scholarship under this subtitle shall enter into an agreement with the Director.

(b) CONTENTS.—Each agreement described in subsection (a) shall—

(1) provide assurances that the individual shall work in a law enforcement position in the State which awarded such individual the scholarship in accordance with the service obligation described in subsection (c) after completion of such individual's academic courses leading to an associate, bachelor, or graduate degree;

(2) provide assurances that the individual will repay all of the scholarship assistance awarded under this title in accordance with such terms and conditions as the Director shall prescribe, in the event that the requirements of the agreement under paragraph (1) are not complied with except where the individual—

(A) dies;

(B) becomes physically or emotionally disabled, as established by the sworn affidavit of a qualified physician; or

(C) has been discharged in bankruptcy; and

(3) set forth the terms and conditions under which an individual receiving a scholarship under this subtitle may seek employment in the field of law enforcement in a State other than the State which awarded such individual the scholarship under this subtitle.

(c) SERVICE OBLIGATION.—(1) Each individual awarded a scholarship under this subtitle shall work in a law enforcement position in the State which awarded such individual the scholarship for a period of one month for each credit hour for which financial assistance is received under this subtitle.

(2) For purposes of satisfying the requirement specified in paragraph (1) each individual awarded a scholarship under this Act shall work in a law enforcement position in the State which awarded such individual the scholarship for not less than 6 months nor more than 2 years.

SEC. 829. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subtitle $30,000,000 for fiscal year 1992 and such sums as are necessary to carry out the subtitle for fiscal years 1993, 1994, 1995, and 1996.

Subtitle C—Reports

SEC. 831. REPORTS TO CONGRESS.

(a) ANNUAL REPORTS.—No later than April 1 of each fiscal year, the Director shall submit a report to the Attorney General, the President, the Speaker of the House of Representatives, and the President of the Senate. Such report shall—

(1) state the number of current and past participants in the Police Corps program authorized by subtitle A, broken down according to the levels of educational study in which they are engaged and years of service they have served on police forces (including service following completion of the 4-year service obligation);

(2) describe the geographic dispersion of participants in the Police Corps program;

(3) state the number of present and past scholarship recipients under subtitle B, categorized according to the levels of educational study in which such recipients are engaged and the years of service such recipients have served in law enforcement;

(4) describe the geographic, racial, and gender dispersion of scholarship recipients under subtitle B; and

(5) describe the progress of the programs authorized by this title and make recommendations for changes in the programs.

(b) SPECIAL REPORT.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall submit a report to Congress containing a plan to expand the assistance provided under subtitle B to Federal law enforcement officers. Such plan shall contain information of the number and type of Federal law enforcement officers eligible for such assistance.

AMENDMENT NO. 450

Add at the appropriate place in the bill:

TITLE X—FEDERAL LAW ENFORCEMENT AGENCIES

SEC. 1001. SHORT TITLE.

This title may be cited as the "Federal Law Enforcement Act of 1991".

SEC. 1002. AUTHORIZATION FOR FEDERAL LAW ENFORCEMENT AGENCIES.

There is authorized to be appropriated for fiscal year 1992, $345,500,000 (which shall be in addition to any other appropriations) to be allocated as follows:

(1) For the Drug Enforcement Administration, $100,500,000, which shall include:

(A) not to exceed $45,000,000 to hire, equip and train not less than 350 agents and necessary support personnel to expand DEA investigations and operations against drug trafficking organizations in rural areas;

(B) not to exceed $25,000,000 to expand DEA State and Local Task Forces, including payment of state and local overtime, equipment and personnel costs; and

(C) not to exceed $5,000,000 to hire, equip and train not less than 50 special agents and necessary support personnel to investigate violations of the Controlled Substances Act relating to anabolic steroids.

(2) For the Federal Bureau of Investigation, $98,000,000 for the hiring of additional agents and support personnel to be dedicated to the investigation of drug trafficking organizations;

(3) For the Immigration and Naturalization Service, $45,000,000, to be further allocated as follows:

(A) $25,000,000 to hire, train and equip no fewer than 500 full-time equivalent Border Patrol officer positions;

(B) $20,000,000, to hire, train and equip no fewer than 400 full-time equivalent INS criminal investigators dedicated to drug trafficking by illegal aliens and to deportations of criminal aliens.

(4) For the United States attorneys, $45,000,000 to hire and train not less than 350 additional prosecutors and support personnel dedicated to the prosecution of drug trafficking and related offenses;

(5) For the United States Marshals Service, $10,000,000;

(6) For the Bureau of Alcohol, Tobacco, and Firearms, $15,000,000 to hire, equip and train not less than 100 special agents and support personnel to investigate firearms violations committed by drug trafficking organizations, particularly violent gangs;

(7) For the United States courts, $20,000,000 for additional magistrates, probation officers, other personnel and equipment to address the case-load generated by the additional investigative and prosecutorial resources provided in this title; and

(8) For Federal defender services, $12,000,000 for the defense of persons prosecuted for drug trafficking and related crimes.

AMENDMENT NO. 451

Add at the appropriate place in the bill:

TITLE XIII—PRISON FOR VIOLENT DRUG OFFENDERS

SEC. 1301. REGIONAL PRISONS.

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

(1) The total population of Federal, State, and local prisons and jails increased by 84 percent between 1980 and 1988 and currently numbers more than 900,000 people.

(2) More than 60 percent of all prisoners have a history of drug abuse or are regularly using drugs while in prison, but only 11 percent of State prison inmates and 7 percent of Federal prisoners are enrolled in drug treatment programs. Hundreds of thousands of prisoners are not receiving needed drug treatment while incarcerated, and the number of such persons is increasing rapidly.

(3) Drug-abusing prisoners are highly likely to return to crime upon release but the recidivism rate is much lower for those who successfully complete treatment programs. Providing drug treatment to prisoners during incarceration therefore provides an opportunity to break the cycle of recidivism, reducing the crime rate and future prison overcrowding.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for

the fiscal year ending September 30, 1992, the following amounts:

(1) $600,000,000 for the construction of 10 regional prisons; and

(2) $100,000,000 for the operation of such regional prisons for one year.

Such amounts shall be in addition to any other amounts authorized to be appropriated to the Bureau of Prisons.

(c) LOCATION AND POPULATION.—The regional prisons authorized by this section shall be located in places chosen by the Director of National Drug Control Policy, after consulting with the Director of the Bureau of Prisons, not less than 6 months after the effective date of this section. Each such facility shall be used to accommodate a population consisting of State and Federal prisoners in proportions of 20 percent Federal and 90 percent State.

(d) ELIGIBILITY OF PRISONERS—The regional prisons authorized by this section shall be used to incarcerate State and Federal prisoners who have release dates of not more than 2 years from the date of assignment to the prison and who have been found to have substance abuse problems requiring long-term treatment.

(e) STATE RESPONSIBILITIES.—(1) The States shall select prisoners for assignment to the regional prisons who, in addition to satisfying eligibility criteria otherwise specified in this section, have long-term drug abuse problems and serious criminal histories. Selection of such persons is necessary for the regional prison program to have the maximum impact on the crime rate and future prison overcrowding, since such persons are the ones most likely to commit new crimes following release. Prisoners selected for assignment to a regional prison must agree to the assignment.

(2) Any State seeking to refer a State prisoner to a regional prison shall submit to the Director of the Bureau of Prisons (referred to as the"Director") an aftercare plan setting forth the provisions that State will make for the continued treatment of the prisoner in a therapeutic community following release. The aftercare plan shall also contain provisions for vocational job training where appropriate.

(3) The State referring the prisoner to the regional prison (referred as the "sending State") shall reimburse the Bureau of Prisons for the full cost of the incarceration and treatment of the prisoner, except that if the prisoner successfully completes the treatment program, the Director shall return to the sending State 25 percent of the amount paid for that prisoner. The total amount returned to each State under this paragraph in each fiscal year shall be used by that State to provide the aftercare treatment required by paragraph (2).

(f) POWERS OF THE DIRECTOR.—(1) The Director shall have the exclusive right to determine whether or not a State or Federal prisoner satisfies the eligibility requirements of this section and whether the prisoner is to be accepted into the regional prison program. The Director shall have the right to make this determination after the staff of the regional prison has had an opportunity to interview the prisoner in person.

(2) The Director shall have the exclusive right to determine if a prisoner in the regional treatment program is complying with all of the conditions and requirements of the program. The Director shall have the authority to return any prisoner not complying with the conditions and requirements of the program to the sending State at any time. The Director shall notify the sending State whenever such prisoner is returned that the prisoner has not successfully completed the treatment program.

AMENDMENT NO. 452

Add at the appropriate place in the bill:

TITLE XIV—BOOT CAMPS

SEC. 1401. BOOT CAMPS.

(a) IN GENERAL.—Not later than 1 year after the effective date of this section, the Attorney General shall establish within the Bureau of Prisons 10 military-style boot camp prisons (referred to in this title as "boot camps"). The boot camps will be located on closed military installations on sites to be chosen by the Director of National Drug Control Policy, after consultation with the Director of the Bureau of Prisons, and will provide a highly regimented schedule of strict discipline, physical training, work, drill, and ceremony characteristic of military basic training as well as remedial education and treatment for substance abuse.

(b) CAPACITY.—Each boot camp shall be designed to accommodate between 200 and 300 inmates for periods of not less than 90 days and not greater than 120 days. Not more than 20 percent of the inmates shall be Federal prisoners. The remaining inmates shall be State prisoners who are accepted for participation in the boot camp program pursuant to subsection (d).

(c) FEDERAL PRISONERS.—Section 3582 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(e) BOOT CAMP PRISON AS A SENTENCING ALTERNATIVE.—(1) The court, in imposing sentence in the circumstances described in paragraph (2), may designate the defendant as eligible for placement in a boot camp prison. The Bureau of Prisons shall determine whether a defendant so designated will be assigned to a boot camp prison.

"(2) A defendant may be designated as eligible for placement in boot camp prison if—

"(A) the defendant—

"(i) is under 25 years of age;

"(ii) has no prior conviction for which he or she has served more than 10 days incarceration; and

"(iii) has been convicted of an offense involving a controller substance punishable under the Controlled Substances Act or the Controlled Substances Export and Import Act, or any other offense if the defendant, at the time of arrest or at any time therefore, tested positive for the presence of a controlled substance in his or her blood or urine; and

"(B) the sentencing court finds that the defendant's total offense level under the Federal sentencing guidelines is level 9 or less.

"(3) If the Director of the Bureau of Prisons finds that an inmate placed in a boot camp prison pursuant to this subsection has willfully refused to comply with the conditions of confinement in the boot camp, the Director may transfer the inmate to any other correctional facility in the Federal prison system.

"(4) Successful completion of assignment to a boot camp shall constitute satisfaction of any period of active incarceration, but shall not affect any aspect of a sentence relating to a fine, restitution, or supervised release.".

(d) STATE PRISONERS.—(1) Any person who has been convicted of a criminal offense in any State, or who anticipates entering a plea of guilty of such offense, but who has not yet been sentenced, may apply to be assigned to a boot camp. Such application shall be made to the Bureau of Prisons and shall be in the form designated by the Director of the Bureau of Prisons and shall contain a statement certified by counsel for the applicant that at the time of sentencing the applicant is likely to be eligible for assignment to a boot camp pursuant to paragraph (2). The Bureau of Prisons shall respond to such applicants within 14 days so that the sentencing court is aware of the result of the application at the time of sentencing. In responsing to such applications, the Bureau of Prisons shall determine, on the basis of the availability of space, whether a defendant who becomes eligible for assignment to a boot camp prison at the time of sentencing will be so assigned.

(2) A person convicted of a State criminal offense shall be eligible for assignment to a boot camp if he or she—

(A) is under 25 years of age;

(B) has no prior conviction for which he or she has served more than 10 days incarceration;

(C) has been sentenced to a term of imprisonment that will be satisfied under the law of the sentencing State if the defendant successfully completes a term or not less than 90 days nor more than 120 days in a boot camp;

(D) has been designated by the sentencing court as eligible for assignment to a boot camp; and

(E) has been convicted of an offense involving a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or any other offense if the defendant, at the time of arrest or at any time thereafter, tested positive for the presence of a controlled substance in his or her blood or urine.

(3) If the Director of the Bureau of Prisons finds that an inmate placed in a boot camp prison pursuant to this subsection has willfully refused to comply with the conditions of confinement in the boot camp, the Director may transfer the inmate back to the jurisdiction of the State sentencing court.

(4) Each State that refers a prisoner to a boot camp shall reimburse the Bureau of Prisons for—

(A) 80 percent of the cost incurred by the Bureau of Prisons for incarceration and treatment and other services to such prisoner that successfully completes the program; and

(B) 100 percent of such costs for each prisoner that enters a boot camp but does not successfully complete the program.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $150,000,000 for fiscal year 1992 of which not more than $12,500,000 shall be used to convert each closed military base to a boot camp prison and not more than $2,500,000 shall be used to operate each boot camp for one fiscal year. Such amounts shall be in addition to any other amounts authorized to be appropriated to the Bureau of Prisons.

AMENDMENT NO. 453

Add at the appropriate place in the bill:

TITLE XV—YOUTH VIOLENCE ACT

Subtitle A—Increasing Penalties for Employing Children to Distribute Drugs Near Schools and Playgrounds

SEC. 1501. STRENGTHENING FEDERAL PENALTIES.

Section 419 of the Controlled Substances Act (21 U.S.C. 859) is amended as follows:

(1) at the end of subsection (b) by adding the following:

"(c) Notwithstanding any other provision of law, any person at least 18 years of age who knowingly and intentionally—

"(1) employs, hires, uses, persuades, induces, entices, or coerces, a person under 18 years of age to violate any provision of this section; or

"(2) employs, hires, uses, persuades, induces, entices, or coerces, a person under 18 years of age to assist in avoiding detection or apprehension for any offense of this section by any Federal, State, or local law enforcement official,

is punishable by a term of imprisonment, or fine, or both, up to triple that authorized by section 841(b) of this title.";

(2) in subsection (c) by—

(A) striking "(c)" and inserting in lieu thereof "(d)";

(B) inserting "or (c)" after "imposed under subsection (b)"; and

(C) inserting "or (c)" after "convicted under subsection (b)";

(3) in subsection (d) by striking "(d)" and inserting in lieu thereof "(e)".

Subtitle B—Antigang Grants

SEC. 1511. GRANT PROGRAM.

The Juvenile Justice and Delinquency Prevention Act of 1974 is amended in part B by—

(1) inserting after the heading for such part the following:

"Subpart I—General Grant Programs";

and

(2) adding at the end thereof a new subpart II, as follows:

"Subpart II—Juvenile Drug Trafficking and Gang Prevention Grants

"FORMULA GRANTS

"SEC. 231. (a) The Administrator is authorized to make grants to States and units of general local government or combinations thereof to assist them in planning, establishing, operating, coordinating, and evaluating projects directly or through grants and contracts with public and private agencies for the development of more effective programs including education, prevention, treatment and enforcement programs to reduce—

"(1) the formation or continuation of juvenile gangs; and

"(2) the use and sale of illegal drugs by juveniles.

"(b) The grants made under this section can be used for any of the following specific purposes:

"(1) To reduce the participation of juveniles in drug related crimes (including drug trafficking and drug use), particularly in and around elementary and secondary schools;

"(2) To reduce juvenile involvement in organized crime, drug and gang-related activity, particularly activities that involve the distribution of drugs by or to juveniles;

"(3) To develop within the juvenile justice system, including the juvenile corrections system, new and innovative means to address the problems of juveniles convicted of serious, drug-related and gang-related offenses;

"(4) To reduce juvenile drug and gang-related activity in public housing projects;

"(5) To provide technical assistance and training to personnel and agencies responsible for the adjudicatory and corrections components of the juvenile justice system to identify drug-dependent or gang-involved juvenile offenders and to provide appropriate counseling and treatment to such offenders;

"(6) To promote the involvement of all juveniles in lawful activities, including in-school and after-school programs for academic, athletic or artistic enrichment that also teach that drug and gang involvement are wrong.

"(7) To facilitate Federal and State cooperation with local school officials to develop education, prevention and treatment programs for juveniles who are likely to participate in the drug trafficking, drug use or gang-related activities;

"(8) To prevent juvenile drug and gang involvement in public housing projects through programs establishing youth sports and other activities, including girls and boys clubs, scout troops, and little leagues;

"(9) To provide pre- and post-trial drug abuse treatment to juveniles in the juvenile justice system; with the highest possible priority to providing drug abuse treatment to drug-dependent pregnant juveniles and drug-dependent juvenile mothers; and

"(10) To provide education and treatment programs for youth exposed to severe violence in their homes, schools or neighborhoods.

"(c) Of the funds made available to each State under this section (Formula Grants) 50 per centum of the funds made available to each State in any fiscal year shall be used for juvenile drug supply reduction programs and 50 per centum shall be used for juvenile drug demand reduction programs.

"SPECIAL EMPHASIS DRUG DEMAND REDUCTION AND ENFORCEMENT GRANTS

"SEC. 232. (a) The purpose of this section is to provide additional Federal assistance and support to identify promising new juvenile drug demand reduction and enforcement programs, to replicate and demonstrate these programs to serve as national, regional or local models that could be used, in whole or in part, by other public and private juvenile justice programs, and to provide technical assistance and training to public or private organizations to implement similar programs. In making grants under this section, the Administrator shall give priority to programs aimed at juvenile involvement in organized gang- and drug-related activities, including supply and demand reduction programs.

"(b) The Administrator is authorized to make grants to, or enter into contracts with, public or private non-profit agencies, institutions, or organizations or individuals to carry out any purpose authorized in section 231. The Administrator shall have final authority over all funds awarded under this subchapter.

"(c) Of the total amount appropriated for this subchapter, 20 per centum shall be reserved and set aside for this section in a special discretionary fund for use by the Administrator to carry out the purposes specified in section 231 as described in section 232(a). Grants made under this section may be made for amounts up to 100 per centum of the costs of the programs or projects.

"AUTHORIZATION

"SEC. 233. There is authorized to be appropriated $100,000,000 in fiscal year 1992 and such sums as may be necessary in fiscal year 1993 to carry out the purposes of this subpart.

"ALLOCATION OF FUND

"SEC. 234. Of the total amounts appropriated under this subpart in any fiscal year the amount remaining after setting aside the amounts required to be reserved to carry out section 232 (Discretionary Grants) shall be allocated as follows:

"(1) $400,000 shall be allocated to each of the participating States;

"(2) Of the total funds remaining after the allocation under paragraph (a), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of juveniles of such State bears to the population of juveniles of all the States.

"APPLICATION

"SEC. 235. (a) Each State applying for grants under section 231 (Formula Grants) and each public or private entity applying for grants under section 232 (Discretionary Grants) shall submit an application to the Administrator in such form and containing such information as the Administrator shall prescribe.

"(b) To the extent practical, the Administrator shall prescribe regulations governing applications for this subpart that are substantially similar to the applications required under part I (general juvenile justice formula grant) and part C (special emphasis prevention and treatment grants), including the procedures relating to competition.

"(c) In addition to the requirements prescribed in subsection (b), each State application submitted under section 231 shall include a detailed description of how the funds made available shall be coordinated with Federal assistance provided in parts B and C of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 and by the Bureau of Justice Assistance under the Drug Control and System Improvement Grant program.

"REVIEW AND APPROVAL OF APPLICATIONS

"SEC. 236. The procedures and time limits imposed on the Federal and State Governments under sections 505 and 508, respectively, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 relating to the review of applications and distribution of Federal funds shall apply to the review of applications and distribution of funds under this subpart.".

SEC. 1512. CONFORMING AMENDMENTS.

(a) TITLE II.—Section 291 of title II of the Juvenile Justice Delinquency Prevention Act of 1974 (42 U.S.C. 5671) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking "(other than part D)";

(B) and by striking paragraph (2) in its entirety; and

(2) in subsection (b) by striking "(other than part D)".

(b) PART D.—Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 is hereby repealed.

(c) PART E.—Part E of title II of such Act is redesignated as part D.

Subtitle C—Juvenile Penalties

SEC. 1521. TREATMENT OF VIOLENT JUVENILES AS ADULTS.

(a) DESIGNATION OF UNDESIGNATED PARAGRAPHS.—Section 5032 of title 18, United States Code, is amended by designating undesignated paragraphs one through eleven as subsections (a) through (k), respectively.

(b) JURISDICTION OVER CERTAIN FIREARMS OFFENSES.—Section 5032(a) of title 18, United States Code, as so designated by this section, is amended by striking "922(p)" and inserting "924(b), (g), or (h)".

(c) ADULT STATUS OF JUVENILES WHO COMMIT FIREARMS OFFENSES.—Section 5032(d) of title 18, United States Code, is amended—

(1) by striking "A juvenile" and inserting "(1) Except as provided in paragraphs (2) and (3), a juvenile";

(2) by striking ", except that," and designating the following matter up to the semicolon as paragraph (2);

(3) by striking "however" after the semicolon and designating the remaining matter as paragraph (3); and

(4) by inserting in paragraph (2) "or section 924 (b), (g), or (h) of this title," after "959),".

(d) FACTORS FOR TRANSFERRING A JUVENILE TO ADULT STATUS.—Section 5032(e) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Evidence";

(2) by striking "intellectual development and psychological maturity;" and inserting "level of intellectual development and maturity; and";

(3) by inserting ", such as rehabilitation and substance abuse treatment," after "past treatment efforts";

(4) by striking "; the availability of programs designed to treat the juvenile's behavioral problems"; and

(5) by adding at the end the following:

"(2) In considering the nature of the offense, as required by this subsection, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use and distribution of controlled substances or firearms. Such factors, if found to exist, shall weigh heavily in favor of a transfer to adult status, but the absence of such factors shall not preclude a transfer to adult status.".

SEC. 1522. SERIOUS DRUG OFFENSES BY JUVENILES AS ARMED CAREER CRIMINAL ACT PREDICATES.

(a) ACT OF JUVENILE DELINQUENCY.—Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking out "or" at the end of clause (i);

(2) by striking out "and" at the end of clause (ii) and inserting in lieu thereof "or"; and

(3) by adding a new clause (iii), as follows:

"(iii) any act of juvenile delinquency that if committed by an adult would be punishable under section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)); and".

(b) SERIOUS DRUG OFFENSE.—Section 924(e)(2)(C) of title 18, United States Code, is amended by adding "or serious drug offense" after "violent felony".

AMENDMENT NO. 454

Add at the appropriate place in the bill:

TITLE XVI—RURAL CRIME AND DRUG CONTROL ACT

Subtitle A—Fighting Drug Trafficking in Rural Areas

SEC. 1601. AUTHORIZATIONS FOR RURAL LAW ENFORCEMENT AGENCIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by adding at the end thereof the following new paragraph:

"(7) There are authorized to be appropriated $50,000,000 for fiscal year 1992 and such sums as may be necessary for fiscal years 1993 and 1994 to carry out part O of this title.".

(b) AMENDMENT TO BASE ALLOCATION.—Section 1501(a)(2)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking "$100,000" and inserting in lieu thereof "$250,000".

SEC. 1602. RURAL DRUG ENFORCEMENT TASK FORCES.

(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Attorney General, in consultation with the Governors, mayors, and chief executive officers of State and local law enforcement agencies, shall establish a Rural Drug Enforcement Task Force in each of the Federal judicial districts which encompass significant rural lands.

(b) TASK FORCE MEMBERSHIP.—The task forces established under subsection (a) shall be chaired by the United States Attorney for the respective Federal judicial district. The task forces shall include representatives from—

(1) State and local law enforcement agencies;

(2) the Drug Enforcement Administration;

(3) the Federal Bureau of Investigation;

(4) the Immigration and Naturalization Service and

(5) law enforcement officers from the United States Park Police, United States Forest Service and Bureau of Land Management, and such other Federal law enforcement agencies as the Attorney General may direct.

SEC. 1603. CROSS-DESIGNATION OF FEDERAL OFFICERS.

The Attorney General shall cross-designate up to 100 law enforcement officers from each of the agencies specified under section 1502(b)(5) with jurisdiction to enforce the provisions of the Controlled Substances Act on non-Federal lands to the extent necessary to effect the purposes of this title.

SEC. 1604. RURAL DRUG ENFORCEMENT TRAINING.

(a) SPECIALIZED TRAINING FOR RURAL OFFICERS.—The Director of the Federal Law Enforcement Training Center shall develop a specialized course of instruction devoted to training law enforcement officers from rural agencies in the investigation of drug trafficking and related crimes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $1,000,000 in each of the fiscal years 1992, 1993 and 1994 to carry out the purposes of subsection (a) of this section.

Subtitle B—Increasing Penalties for Certain Drug Trafficking Offenses

SEC. 1611. SHORT TITLE.

This subtitle may be cited as the "Ice Enforcement Act of 1991".

SEC. 1612. STRENGTHENING FEDERAL PENALTIES.

(a) LARGE AMOUNT.—Section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended—

(1) in clause (vii) by striking "or" at the end thereof;

(2) by inserting "or" at the end of clause (viii); and

(3) by adding a new clause (ix) as follows:

"(ix) 25 grams or more of methamphetamine, its salts, isomers, and salts of its isomers, that is 80 percent pure and crystalline in form.".

(b) SMALLER AMOUNT.—Section 401(b) (1)(B) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(B)) is amended as follows:

(1) at the end of clause (vii) by striking "or";

(2) by inserting at the end of clause (vii) the word "or"; and

(3) by adding a new clause (ix) as follows:

"(ix) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers, that is 80 percent pure and crystalline in form.".

Subtitle C—Rural Drug Prevention and Treatment

SEC. 1621. RURAL SUBSTANCE ABUSE TREATMENT AND EDUCATION GRANTS.

Part A of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end thereof the following new section:

"SEC. 509H. RURAL SUBSTANCE ABUSE TREATMENT.

"(a) IN GENERAL.—The Director of the Office for Treatment Improvement (hereafter referred to in this section as the 'Director') shall establish a program to provide grants to hospitals, community health centers, migrant health centers, health entities of Indian tribes and tribal organizations (as defined in section 1913(b)(5)), and other appropriate entities that serve nonmetropolitan areas to assist such entities in development and implementing projects that provide, or expand the availability of, substance abuse treatment services.

"(b) REQUIREMENTS.—To receive a grant under this section a hospital, community health center, or treatment facility shall—

"(1) serve a nonmetropolitan area or have a substance abuse treatment program that is designed to serve a nonmetropolitan area;

"(2) operate, or have a plan to operate, an approved substance abuse treatment program;

"(3) agree to coordinate the project assisted under this section with substance abuse treatment activities with the State and local agencies responsible for substance abuse treatment; and

"(4) prepare and submit an application in accordance with subsection (c).

"(c) APPLICATION.—

"(1) IN GENERAL.—To be eligible to receive a grant under this section an entity shall submit an application to the Director at such time, in such manner, and containing such information as the Director shall require.

"(2) COORDINATED APPLICATIONS.—State agencies that are responsible for substance abuse treatment may submit coordinated grant applications on behalf of entities that are eligible for grants pursuant to subsection (b).

"(d) PREVENTION PROGRAMS.—

"(1) IN GENERAL.—Each entity receiving a grant under this section may use a portion of such grant funds to further community-based substance abuse prevention activities.

"(2) REGULATIONS.—The Director, in consultation with the Director of the Office of Substance Abuse Prevention, shall promulgate regulations regarding the activities described in paragraph (1).

"(e) SPECIAL CONSIDERATION.—In awarding grants under this section the Director shall give priority to—

"(1) projects sponsored by rural hospitals that are qualified to receive rural health care transition grants as provided for in section 4005(e) of the Omnibus Budget Reconciliation Act of 1987;

"(2) projects serving nonmetropolitan areas that establish links and coordinate activities between hospitals, community health centers, community mental health centers, and substance abuse treatment centers; and

"(3) projects that are designed to serve areas that have no available existing treatment facilities.

"(f) DURATION.—Grants awarded under subsection (a) shall be for a period not to exceed 3 years, except that the Director may establish a procedure for renewal of grants under subsection (a).

"(g) GEOGRAPHIC DISTRIBUTION.—To the extent practicable, the Director shall provide grants to fund at least one project in each State.

"(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section there are authorized to be appropriated $25,000,000 for each of the fiscal years 1992 and 1993.".

SEC. 1622. CLEARINGHOUSE PROGRAM.

Section 509 of the Public Health Service Act (42 U.S.C. 290aa-7) is amended—

(1) in paragraph (3), by striking out "and" at the end thereof;

(2) in paragraph (4), by striking out the period; and

(3) by adding at the end thereof the following new paragraphs—

"(5) to gather information pertaining to rural drug abuse treatment and education projects funded by the Alcohol, Drug Abuse, and Mental Health Administration, as well as other such projects operating throughout the United States; and

"(6) to disseminate such information to rural hospitals, community health centers, community mental health centers, treatment facilities, community organizations, and other interested individuals.".

Subtitle D—Rural Land Recovery Act

SEC. 1631. DIRECTOR OF RURAL LAND RECOVERY.

Each of the task forces established under section 1502(a) shall include one Director of Rural Land Recovery whose duties shall include the coordination of all activities outlined under this subtitle.

SEC. 1632. PROSECUTION OF CLANDESTINE LABORATORY OPERATORS.

(a) IN GENERAL.—State and Federal prosecutors, when bringing charges against the operators of clandestine methamphetamine and other dangerous drug laboratories shall, to the fullest extent possible, include, in addition to drug-related counts, counts involving infringements of the Resource Conservation and Recovery Act or any other environmental protection Act, including—

(1) illegal disposal of hazardous waste; and

(2) knowing endangerment of the environment.

(b) LAW SUITS.—State and Federal prosecutors and private citizens may bring suit against the operators of clandestine methamphetamine and other dangerous drug laboratories for environmental and health related damages caused by the operators in their manufacture of illicit substances.

AMENDMENT NO. 455

Add at the appropriate place in the bill:

TITLE XVII—DRUG EMERGENCY AREAS ACT OF 1991

SEC. 1701. SHORT TITLE.

This title may be cited as the "Drug Emergency Areas Act of 1991".

SEC. 1702. DRUG EMERGENCY AREAS.

Subsection (c) of section 1005 of the National Narcotics Leadership Act of 1988 is amended to read as follows:

"(c) DECLARATION OF DRUG EMERGENCY AREAS.—

"(1) PRESIDENTIAL DECLARATION.—(A) In the event that a major drug-related emergency exists throughout a State or a part of a State, the President may, in consultation with the Director and other appropriate officials, declare such State or part of a State to be a drug emergency area and may take any and all necessary actions authorized by this subsection or otherwise authorized by law.

"(B) For the purposes of this subsection, the term 'major drug-related emergency' means any occasion or instance in which drug trafficking, drug abuse, or drug-related violence reaches such levels, as determined by the President, that Federal assistance is needed to supplement State and local efforts and capabilities to save lives, and to protect property and public health and safety.

"(2) PROCEDURE FOR DECLARATION.—(A) All requests for a declaration by the President designating an area to be a drug emergency area shall be made, in writing, by the Governor or chief executive officer of any affected State or local government, respectively, and shall be forwarded to the President through the Director in such form as the Director may by regulation require. One or more cities, counties, or States may submit a joint request for designation as a drug emergency area under this subsection.

"(B) Any request made under clause (A) of this paragraph shall be based on a written finding that the major drug-related emergency is of such severity and magnitude that effective response to save lives, and to protect property and public health and safety, that Federal assistance is necessary.

"(C) The President shall not limit declarations made under this subsection to highly-populated centers of drug trafficking, drug use or drug-related violence, but shall also consider applications from governments of less populated areas where the magnitude and severity of such activities is beyond the capability of the State or local government to respond.

"(D) As part of a request for a declaration by the President under this subsection, and as a prerequisite to Federal drug emergency assistance under this subsection, the Governor(s) or chief executive officer(s) shall—

"(i) take appropriate response action under State or local law and furnish such information on the nature and amount of State and local resources which have been or will be committed to alleviating the major drug-related emergency;

"(ii) certify that State and local government obligations and expenditures will comply with all applicable cost-sharing requirements of this subsection; and

"(iii) submit a detailed plan outlining the State and/or local goverment's short- and long-term plans to respond to the major drug-related emergency, specifying the types and levels of Federal assistance requested, and including explicit goals (where possible quantitative goals) and timetables and shall specify how Federal assistance under this subsection is intended to achieve such goals.

"(E) The Director shall review any request submitted pursuant to this subsection and forward the application, along with a recommendation to the President on whether to approve or disapprove the application, within 30 days after receiving such application. Based on the application and the recommendation of the Director, the President may declare an area to be a drug emergency area under this subsection.

"(3) FEDERAL MONETARY ASSISTANCE.—(A) The President is authorized to make grants to State or local governments of up to, in the aggregate for any single major drug-related emergency, $50,000,000.

"(B) The Federal share of assistance under this section shall not be greater than 75 percent of the costs necessary to implement the short- and long-term plan outlined in paragraph (2)(D)(iii).

"(C) Federal assistance under this subsection shall not be provided to a drug disaster area for more than 1 year. In any case where Federal assistance is provided under this Act, the Governor(s) or chief executive officer(s) may apply to the President, through the Director, for an extension of assistance beyond 1 year. The President, based on the recommendation of the Director, may extend the provision of Federal assistance for not more than an additional 180 days.

"(D) Any State or local government receiving Federal assistance under this subsection shall balance the allocation of such assistance evenly between drug supply reduction and drug demand reduction efforts, unless State or local conditions dictate otherwise.

"(4) NONMONETARY ASSISTANCE.—In addition to the assistance provided under paragrah (3), the President may—

"(A) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts; and

"(B) provide technical and advisory assistance, including communications support and law enforcement-related intelligence information.

"(5) ISSUANCE OF IMPLEMENTING REGULATIONS.—Not later than 90 days after the enactment of this subsection, the Director shall issue regulations to implement this subsection, including such regulations as may be necessary relating to applications for Federal assistance and the provision of Federal monetary and nonmonetary assistance.

"(6) AUDIT BY COMPTROLLER GENERAL.—The Comptroller General shall conduct an audit of any Federal assistance (both monetary and nonmonetary) of an amount greater than $100,000 provided to a State or local government under this subsection, including an evaluation of the effectiveness of such assistance based on the goals contained in the application for assistance.

"(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year 1992, 1993, 1994, 1995, and 1996. $300,000,000 to carry out the purposes of this subsection.".

TITLE XVIII—DRUNK DRIVING CHILD PROTECTION ACT

SEC. 1801. SHORT TITLE.

This title may be cited as the "Drunk Driving Child Protection Act of 1991".

SEC. 1802. STATE LAWS APPLIED IN AREAS OF FEDERAL JURISDICTION.

Section 13(b) of title 18, United States Code, is amended by—

(1) striking "For purposes" and inserting "(1) Subject to paragraph (2) and for purposes"; and

(2) adding at the end thereof the following new paragraph:

"(2)(A) In addition to any term of imprisonment provided for operating a motor vehicle under the influence of a drug or alcohol imposed under the law of a State, territory, possession, or district, the punishment for such an offense under this section shall include an additional term of imprisonment of not more than 1 year, or if serious bodily injury of a minor is caused, 5 years, or if death of a minor is caused, 10 years, and an additional fine of not more than $1,000, or both, if—

"(i) a minor (other than the offender) was present in the motor vehicle when the offense was committed; and

"(ii) the law of the State, territory, possession, or district in which the offense occurred does not provide an additional term of imprisonment under the circumstances described in clause (i).

"(B) For the purposes of subparagraph (A), the term 'minor' means a person less than 18 years of age.".

SEC. 1803. COMMON CARRIERS.

Section 342 of title 18, United States Code, is amended by—

(1) inserting "(a)" before "Whoever"; and

(2) adding at the end thereof the following new subsection:

"(b)(1) In addition to any term of imprisonment imposed for an offense under subsection (a), the punishment for such an of-

fense shall include an additional term of imprisonment of not more than 1 year, or if serious bodily injury of a minor is caused, 5 years, or if death of a minor is caused, 10 years, and an additional fine of not more than $1,000, or both, if a minor (other than the offender) was present in the common carrier when the offense was committed.

"(2) For the purposes of paragraph (1), the term 'minor' means a person less than 18 years of age.".

SEC. 1804. SENSE OF CONGRESS CONCERNING CHILD CUSTODY AND VISITATION RIGHTS.

It is the sense of the Congress that in determining child custody and visitation rights, the courts should take into consideration the history of drunk driving that any person involved in the determination may have.

TITLE XIX—COMMISSION ON CRIME AND VIOLENCE

SEC. 1901. ESTABLISHMENT OF COMMISSION.

There is established a commission to be known as the "National Commission on Crime and Violence in America". The Commission shall be composed of 22 members, appointed as follows:

(1) 6 persons by the President;

(2) 8 persons by the Speaker of the House of Representatives, two of whom shall be appointed on the recommendation of the minority leader; and

(3) 8 persons by the President pro tempore of the Senate, six of whom shall be appointed on the recommendation of the Majority Leader of the Senate and two of whom shall be appointed on the recommendation of the Minority Leader of the Senate.

SEC. 1902. PURPOSE.

The purposes of the Commission are as follows:

(1) To develop a comprehensive and effective crime control plan which will serve as a "blueprint" for action in the 1990s. The report shall include an estimated cost for implementing any recommendations made by the commission.

(2) To bring attention to successful models and programs in crime prevention and crime control.

(3) To reach out beyond the traditional criminal justice community for ideas when developing the comprehensive crime control plan.

(4) To recommend improvements in the coordination of local, State and Federal crime control efforts.

SEC. 1903. RESPONSIBILITIES OF THE COMMISSION.

The commission shall be responsible for the following:

(1) Reviewing the effectiveness of traditional criminal justice approaches in preventing and controlling crime and violence.

(2) Examining the impact that changes to state and Federal law have had in controlling crime and violence.

(3) Examining the problem of youth gangs and provide recommendations as to how to reduce youth involvement in violent crime.

(4) Examining the extent to which assault weapons and high power firearms have contributed to violence and murder in America.

(5) Convening field hearings in various regions of the country to receive testimony from a cross section of criminal justice professionals, business leaders, elected officials, medical doctors, and other citizens that wish to participate.

(6) Review all segments of our criminal justice system, including the law enforcement, prosecution, defense, judicial, corrections components in developing the crime control plan.

SEC. 1904. COMMISSION MEMBERS.

(a) CHAIRPERSON.—The President shall designate a chairperson from among the members of the Commission.

(b) COMPOSITION OF MEMBERSHIP.—The Commission members will represent a cross-section of professions that include law enforcement, prosecution, judges, corrections, education, medicine, business, religion, military, welfare and social services, sports, entertainment, victims of crime, and elected officials from State, local and Federal Government that equally represent both political parties.

SEC. 1905. ADMINISTRATIVE PROVISIONS.

(a) FEDERAL AGENCY SUPPORT.—All Federal agencies shall provide such support and assistance as may be necessary for the Commission to carry out its functions.

(b) EXECUTIVE DIRECTOR AND STAFF.—The President is authorized to appoint and compensate an executive director. Subject to such regulations as the Commission may prescribe, staff of the commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive services and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(c) DETAILED FEDERAL EMPLOYEES.—Upon the request of the chairperson, the heads of executive and military departments are authorized to detail employees to work with the executive director without regard to the provisions of section 3341 of title 5, United States Code.

(d) TEMPORARY AND INTERMITTENT EMPLOYEES.—Subject to rules prescribed by the commission, the chairperson may procure temporary and intermittent services under section 3108(b) of title 5, United States Code, but at a rate of base pay not to exceed the annual rate of base pay for GS-18 of the General Schedule.

SEC. 1906. REPORT.

The Commission shall submit a final report to the President and the Congress not later than one year after the appointment of the Chairperson. The report shall include the findings and recommendations of the Commission as well as proposals for any legislative action necessary to implement such recommendations.

SEC. 1907. TERMINATION.

The Commission shall terminate 30 days after submitting the report required under section 1806.

AMENDMENT NO. 456

Add at the appropriate place in the bill:

TITLE XXII—ORGANIZED CRIME AND DANGEROUS DRUGS DIVISION

Subtitle A—Establishment of an Organized Crime and Dangerous Drugs Division in the Department of Justice

SEC. 2201. SHORT TITLE.

This title may be cited as the "Justice Department Organized Crime and Drug Enforcement Enhancement Act of 1991".

SEC. 2202. FINDINGS.

The Congress finds that—

(1) organized criminal activity contributes significantly to the importation, distribution, and sale of illegal and dangerous drugs;

(2) trends in drug trafficking patterns necessitate a response that gives significant weight to—

(A) the prosecution of drug related crimes; and

(B) the forfeiture and seizure of assets and other civil remedies used to strike at the inherent strength of the drug networks and groups;

(3) the structure of the Department of Justice Criminal Division is inadequate to address such drug-related problems; and

(4) the prosecutorial resources devoted to such problems have been inadequately organized.

SEC. 2203. PURPOSES.

The purposes of this title are to—

(1) establish a new division in the Department of Justice by combining the resources of the Criminal Division and the United States Attorneys offices used for the eradication of organized crime, narcotics, and dangerous drugs with additional resources needed to pursue civil sanctions;

(2) enhance the ability of the Department of Justice to deal with international criminal activity;

(3) enhance the ability of the Department of Justice to maintain a vigorous criminal and equally important civil assault upon organized criminal groups and narcotics traffickers both domestic and international;

(4) enhance the ability of the Department of Justice to attack money laundering activities, both domestic and international; and

(5) maintain the level of effort of the Department of Justice against traditional organized crime activity through the maintenance of independent strike forces.

SEC. 2204. ESTABLISHMENT OF ORGANIZED CRIME AND DANGEROUS DRUGS DIVISION.

(a) ESTABLISHMENT.—There is established within the Department of Justice, the Organized Crime and Dangerous Drugs Division, which shall consist initially of the following units and programs of the Department of Justice as they were organized and were functioning on September 30, 1989:

(1) the Organized Crime and Racketeering Section of the Criminal Division and all subordinate strike forces therein;

(2) the Narcotic and Dangerous Drug Section of the Criminal Division;

(3) the Asset Forfeiture Office of the Criminal Division; and

(4) the Organized Crime Drug Enforcement Task Force Program.

(b) TRANSFER.—(1) There are transferred to the Organized Crime and Dangerous Drugs Division—

(A) all functions of each office and program described under subsection (a)(1), (2), (3), and (4) exercised on September 30, 1989; and

(B) all personnel and available funds of each such office and program.

(2) For the purposes of paragraph (1)(A) the term "functions" means all duties, obligations, powers, authorities, responsibilities, rights, privileges, activities, and programs.

SEC. 2205. ASSISTANT ATTORNEY GENERAL FOR ORGANIZED CRIME AND DANGEROUS DRUGS.

(a) ASSISTANT ATTORNEY GENERAL.—There shall be at the head of the Organized Crime and Dangerous Drugs Division established by this title, an Assistant Attorney General of the Department of Justice for the Organized Crime and Dangerous Drugs Division, who shall—

(1) be appointed by the President, by and with the advice and consent of the Senate;

(2) report directly to the Attorney General of the United States;

(3) coordinate all activities and policies of the Division with the Director of National Drug Control Policy; and

(4) ensure that all investigations and prosecutions are coordinated within the Department of Justice to provide the greatest use of civil proceedings and forfeitures to attack the financial resources of organized criminal and narcotics enterprises.

(b) COMPENSATION.—(1) Section 5315 of title 5, United States Code, is amended by striking out:

"Assistant Attorneys General (10)."

and inserting in lieu thereof:

"Assistant Attorneys General (11).".

(2) The Assistant Attorney General of the Organized Crime and Dangerous Drugs Division shall be paid at the rate of basic pay payable for level IV of the Executive Schedule.

SEC. 2206 DEPUTY ASSISTANT ATTORNEY GENERAL.

(a) ESTABLISHMENT.—There is established the position of Deputy Assistant Attorney General of the Organized Crime and Dangerous Drugs Division, who shall report directly and be responsible to the Assistant Attorney General of the Organized Crime and Dangerous Drugs Division.

(b) COMPENSATION.—The Deputy Assistant Attorney General of the Organized Crime and Dangerous Drugs Division shall be paid the rate of basic pay payable for level V of the Executive Schedule.

SEC. 2207. ADMINISTRATIVE ORGANIZATION OF THE DIVISION.

There shall be established within the Organized Crime and Dangerous Drugs Division such sections and offices as the Attorney General shall deem appropriate to maintain or increase the level of enforcement activities in the following areas:

(1) Criminal Racketeering (including of all activities and personnel transferred from the Organized Crime and Racketeering Section dealing with criminal investigation and prosecution of traditional organized crime, other than civil proceedings or forfeiture);

(2) Criminal Narcotics Trafficking (including all activities and personnel transferred from the Criminal Division and the Organized Crime Drug Enforcement Task Force Program dealing with large scale drug trafficking);

(3) Money laundering (including all activities transferred from the Criminal Division and Organized Crime Drug Enforcement Task Force Program dealing with money laundering investigations and the negotiation of international agreements on financial crimes);

(4) Asset Forfeiture (including all activities and personnel transferred from the Criminal Division dealing with asset forfeiture);

(5) International Crime (indicating the activities and functions set forth in Subtitle B of this title); and

(6) Civil Enforcement (including activities and personnel currently engaged in civil enforcement of the drug and racketeering laws and such additional personnel as may be added pursuant to this Act).

SEC. 2208. COORDINATION AND ENHANCEMENT OF FIELD ACTIVITIES.

(a) ORGANIZED CRIME AND DANGEROUS DRUGS DIVISION.—The Attorney General shall establish no fewer than 20 field offices of the Organized Crime and Dangerous Drug Division. All such field offices of the Division shall be known as Organized Crime and Dangerous Drug Strike Forces.

(b) OFFICES IN SAME AREA.—If two or more sections of the Division established field offices in the same metropolitan area, such offices shall—

(A) be in the same location;

(B) coordinate activities; and

(C) be organized as separate sections of a strike force.

(c) TRANSITION.—(1) Consistent with the provisions of this title—

(A) the Organized Crime and Racketeering Section of the Criminal Division is redesignated as the Criminal Racketeering Section of the Organized Crime and Dangerous Drug Division; and

(B) the Organized Crime Strike Forces are redesignated as the field offices of the Division.

(2) Not later than 180 days after the date of the enactment of this subtitle, the Attorney General shall transfer all attorneys and support staff assigned to the Organized Crime Drug Enforcement Task Forces before such date to the Organized Crime and Dangerous Drug Division and designated the Criminal Narcotics Section. The Assistant Attorney General for such Division shall assign such personnel to the field offices of the Division, with the initial assignments being made to the cities where units of such Task Forces were located before the date of enactment of this subtitle.

(3)(A) Consistent with the provisions of this title, the Asset Forfeiture Office of the Criminal Division is redesignated as the Asset Forfeiture and Civil Enforcement Section of the Organized Crime and Dangerous Drug Division.

(B) Not later than 180 days after the date of the enactment of this subtitle, the Assistant Attorney General shall establish field offices of the Asset Forfeiture and Civil Enforcement Section of the Organized Crime and Dangerous Drug Division which shall include—

(i) agents from the United States Drug Enforcement Administration, the Federal Bureau of Investigation, the Internal Revenue Service, and United States Marshals Office; and

(ii) other individuals experienced, trained and expert in complex financial transactions involving cash, notes, securities, and similar negotiable instruments, with a special expertise in banking matters and business dealings.

(d) DIFFERENT ORGANIZATIONAL STRUCTURE.—Nothing in subsection (c) shall prevent the Attorney General, consistent with the purposes of this title and the provisions of section 2107, from instituting a different organizational structure within the Organized Crime and Dangerous Drug Division as the Attorney General shall deem appropriate following a period of transition.

(e) STRIKE FORCES PLANS.—(1) The agents assigned to the Organized Crime and Dangerous Drug Strike Forces (including all agents assigned to the Organized Crime Drug Enforcement Task Forces program before the date of enactment of this title) shall be dedicated exclusively to and located with the Strike Forces so that the Strike Forces personnel may develop expertise and function as a working unit.

(2) The agents assigned to the Strike Forces from the various participating agencies shall be given credit for the work of the Strike Forces, regardless of the statutory authority used to prosecute Strike Forces cases.

(f) REPORT.—Not later than 1 year after the date of the enactment of this title, the Assistant Attorney General for Organized Crime and Dangerous Drugs in consultation with the Director of National Drug Control Policy, shall report to the Congress on the areas of the United States (especially the southwest border of the United States) that may require increased assistance from the Department of Justice through the establishment of additional strike forces.

(g) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated $45,000,000 for salaries and expenses of the Organized Crime and Dangerous Drug Division of the Department of Justice for fiscal year 1992.

(2) Any appropriation of funds authorized under paragraph (1) shall be in addition to any appropriations requested by the President in the 1992 fiscal year budget submitted by the President to the Congress for fiscal year 1992, or provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1992.

Subtitle B—International Prosecution Teams

SEC. 2211. INTERNATIONAL PROSECUTION TEAMS.

(a) FINDINGS.—The Congress finds that—

(1) Drug trafficking, organized crime, and money laundering are problems that are international in scope.

(2) The traditional focus of United States law enforcement agencies on domestic criminal activity has restricted the development of the necessary expertise and coordination to address the international aspects of these problems adequately.

(3) The Justice Department must expand its resources and reorganize its component to engage in new responsibilities and activities involving international crime.

(b) INTERNATIONAL DRUG ENFORCEMENT TEAMS.—In addition to the components and functions otherwise specified in this chapter, the Organized Crime and Dangerous Drug Division shall include no fewer than 10 International Drug Enforcement Teams devoted exclusively to investigating, prosecuting and supporting the investigation and prosecution of international drug cases. Such teams shall be responsive for developing expertise in handling civil and criminal cases involving extradition, money laundering, drug-related corruption, and other complex cases relating to international drug trafficking.

(c) RELATIONSHIP OF TEAM MEMBERS.—Organized Crime and Dangerous Drug Division personnel assigned to the International Drug Enforcement Teams shall work closely with, and where practical be co-located with, agents and liaison personnel of the various law enforcement, diplomatic, intelligence, and military agencies who shall be assigned as necessary to the enforcement teams.

(d) GOALS.—The teams shall be organized to—

(1) increase the expertise of the Department of Justice in matters relating to international law enforcement and foreign policy;

(2) improve coordination among United States and foreign agencies responsible for law enforcement, foreign policy, and international banking;

(3) target resources toward cases with maximum impact on international narcotics trafficking;

(4) gain the cooperation of private entities in the United States and foreign countries whose cooperation in cases involving money laundering and other drug-related financial crimes is essential; and

AMENDMENT NO. 457

Add at the appropriate place in the bill:

TITLE VII—ASSAULT WEAPONS

SEC. 701. SHORT TITLE.

This title may be cited as the "Antidrug, Assault Weapons Limitation Act of 1991".

SEC. 702. UNLAWFUL ACTS.

Section 922 of title 18, United States Code, is amended by adding at the end thereof the following:

"(s)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer, import, transport, ship, receive, or possess any assault weapon.

"(2) This subsection does not apply with respect to—

"(A) transferring, importing, transporting, shipping, and receiving to or by, or possession by or under, authority of the United States or any department or agency thereof, or of any State or any department, agency, or political subdivision thereof, of such an assault weapon, or

"(B) any lawful transferring, transporting, shipping, receiving, or possession of such a weapon that was lawfully possessed before the effective date of this subsection.

"(t)(1) It shall be unlawful for any person to sell, ship, or deliver an assault weapon to any person who does not fill out a form 4473 (pursuant to 27 CFR 178.124), or equivalent, in the purchase of such assault weapon.

"(2) It shall be unlawful for any person to purchase, possess, or accept delivery of an assault weapon unless such person has filled out such a form 4473, or equivalent, in the purchase of such assault weapon.

"(3) If a person purchases an assault weapon from anyone other than a licensed dealer, both the purchaser and the seller shall maintain a record of the sale on the seller's original copy of such form 4473, or equivalent.

"(4) Any current owner of an assault weapon that requires retention of form 4473, or equivalent, pursuant to the provisions of this subsection who, prior to the effective date of this subsection purchased such a weapon, shall, within 90 days after the issuing of regulations by the Secretary pursuant to paragraph (5), request a copy of such form from any licensed dealer, as defined in this title, in accordance with such regulations.

"(5) The Secretary shall, within 90 days after the date of enactment of this subsection, prescribe regulations for the request and delivery of such form 4473, or equivalent.".

SEC. 703. DEFINITIONS.

Section 921(a) of title 18, United States Code, is amended by adding at the end thereof the following:

"(29) The term 'assault weapon' means any firearm designated as an assault weapon in this paragraph, including:

"(A) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models),

"(B) Action Arms Israeli Military Industries UZI and Galil,

"(C) Beretta AR-70 (SC-70),

"(D) Colt AR-15 and CAR-15,

"(E) Fabrique Nationale FN/FAL, FN/LAR, and FNC,

"(F) MAC 10 and MAC 11,

"(G) Steyr AUG,

"(H) INTRATEC TEC-9, and

"(I) Street Sweeper and Striker 12.".

SEC. 704. SECRETARY TO RECOMMEND DESIGNATION AS ASSAULT WEAPON.

Chapter 44 of title 18, United States Code, is amended—

(1) by adding at the end thereof the following new section:

"§ 931. Additional assault weapons

"The Secretary, in consultation with the Attorney General, may, when appropriate, recommend to the Congress the addition or deletion of firearms to be designated as assault weapons."; and

(2) in the table of sections by adding at the end thereof the following new item:

"931. Additional assault weapons.".

SEC. 705. ENHANCED PENALTIES.

Section 924(c) of title 18, United States Code, is amended by inserting "and if the firearm is an assault weapon, to imprisonment for 10 years," after "sentenced to imprisonment for five years,".

SEC. 706. DISABILITY.

Section 922(g)(1) of title 18, United States Code, is amended by inserting before the semicolon at the end thereof the following: "or a violation of section 924(i) of this chapter".

SEC. 707. STUDY BY ATTORNEY GENERAL.

(a) IN GENERAL.—The Attorney General is authorized and directed to investigate and study the effect of the provisions of this title and the amendments made by this title and any impact therefrom on violent and drug trafficking crime. Such study shall be done over a period of 18 months, commencing 12 months after the date of enactment of this title.

(b) REPORT.—No later than 30 months after the date of enactment of this title, the Attorney General shall prepare and submit to the Senate of the United States, a report setting forth in detail the findings and determinations made pursuant to subsection (a).

SEC. 708. PENALTIES FOR IMPROPER TRANSFER, STEALING FIREARMS, OR SMUGGLING AN ASSAULT WEAPON IN DRUG-RELATED OFFENSE.

Section 924 of title 18, United States Code, is amended by adding at the end thereof the following:

"(i) Whoever knowingly fails to acquire form 4473, or equivalent (pursuant to 27 CFR 178.124), with respect to the lawful transferring, transporting, shipping, receiving, or possessing of any assault weapon, as required by the provisions of this chapter, shall be fined not more than $1,000 (in accordance with section 3571(e) of this title), imprisoned for not more than 6 months, or both.".

SEC. 709. SUNSET PROVISION.

Unless otherwise provided, this title and the amendments made by this title shall become effective 30 days after the date of enactment of this title. This title, except for section 707, shall be effective for a period of 3 years. At the end of such 3-year period this title and the amendments made by this title, except for section 707, shall be repealed.

AMENDMENT NO. 458

Add at the appropriate place in the bill, the following:

TITLE XXVII—BRADY HANDGUN VIOLENCE PREVENTION ACT

SEC. 2701. SHORT TITLE.

This title may be cited as the "Brady Handgun Violence Prevention Act".

SEC. 2702. WAITING PERIOD REQUIRED BEFORE PURCHASE OF HANDGUN.

(a) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(u)(1) It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (2);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within one day after the transferee furnishes the statement, provided a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) seven days have elapsed from the date the transferee furnished the statement, and the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, which states that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit which—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than five years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of handgun by the transferee would be in violation of law;

"(D) the law of the State—

"(i) prohibits any licensed importer, licensed manufacturer, or licensed dealer from transferring a handgun to an individual who is not licensed under section 923, before at least 7 days have elapsed from the date of the transferee proposes such transfer; or

"(ii) requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law; or

"(E) the transferor has received a report from any system of felon identification established by the Attorney General pursuant to section 6213(a) of the Anti-Drug Abuse Act of 1988, that available information does not indicate that possession or receipt of a handgun by the transferee would violate Federal, State, or local law.

"(2) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that the transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(3) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor, and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(4) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(5)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with paragraph (1)(A)(i)(III) with respect to the statement.

"(B) Unless the chief law enforcement officer to whom a copy of the statement is sent determines that a transaction would violate Federal, State, or local law, the officer shall, within 30 days after the date the transferee made such statement, destroy such copy and any record containing information derived from such statement.

"(6) For purposes of this subsection, the term 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer, or the designee of any such individual.

"(7) This subsection shall not apply to the sale of a firearm in the circumstances described in subsection (c).

"(8) The Secretary shall take necessary actions to assure that the provisions of this subsection are published and disseminated to dealers and to the public.

"(9) A chief law enforcement officer shall not be liable to any person, for action taken by the officer to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun, under any Federal, State, or local law except a law that specifically provides for such liability.".

(b) HANDGUN DEFINED.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(31) The term 'handgun' means—

"(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

"(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.".

(c) PENALTY.—Section 924(a) of such title is amended—

(1) in paragraph (1), by striking "paragraph (2) or (3) of "; and inserting "(2), (3), or (4)"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922(u) shall be fined not more than $1,000, imprisoned for not more than one year, or both.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in 90 or more days after the date of the enactment of this Act.

SEC. 2703. GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS AND TO DEFRAY THE COSTS OF BACKGROUND CHECKS.

(a) IN GENERAL.—The Attorney General shall, subject to appropriations, make a grant to an eligible State to be used—

(1) for the creation of a computerized criminal history record system or improvement of an existing system; and

(2) to defray the cost to State and local law enforcement agencies in conducting background checks on prospective handgun purchasers.

(b) ELIGIBLE STATES.—An eligible State under subsection (a) is one that—

(1) participates in, or makes arrangements to begin participating in by the end of 1993, the Interstate Identification Index operated by the Federal Bureau of Investigation;

(2) makes arrangements to achieve, by the end of 1995, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within 5 years prior to the date of enactment of this Act and thereafter; and

(3) in the case of a State other than a State described in section 922(u)(1)(D) of title 18, United States Code, establishes, by the end of 1993, procedures under which State and local law enforcement officers to whom statements are provided pursuant to section 922(c)(2) or 922(u)(1)(A)(i)(III), of title 18, United States Code, are required to make a reasonable effort to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun, using whatever Federal, State and local recordkeeping systems are readily available for the purpose.

(c) ALLOCATION.—Funds appropriated for grants under subsection (a) shall be allocated as follows:

(1) 50 percent of such funds shall be allocated among the States in accordance with their respective populations.

(2) 50 percent of such funds shall be allocated among the States at the discretion of the Attorney General.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (a) a total of $40,000,000 for fiscal year 1992 and all fiscal years thereafter.

DOLE (AND MITCHELL) AMENDMENT NO. 459

(Ordered to lie on the table.)

Mr. DOLE (for himself and Mr. MITCHELL) submitted an amendment intended to be proposed by them to the bill S. 1241, supra, as follows:

On page 236, strike line 7 and all that follows through the end of the bill and insert the following:

TITLE XXVII—FELON FIREARM PURCHASE PREVENTION ACT OF 1991

SEC. 2701. SHORT TITLE.

This title may be cited as the "Felon Firearm Purchase Prevention Act of 1991".

SEC. 2702. FEDERAL FIREARMS LICENSEE REQUIRED TO CONDUCT CRIMINAL BACKGROUND CHECK BEFORE TRANSFER OF FIREARM TO NONLICENSEE.

(a) INTERIM PROVISION.—Section 922 of title 18, United States Code, as amended by section 702 of this Act, is amended by adding at the end the following new subsection:

"(u)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the date that the Attorney General certifies that the national instant criminal background check system is in compliance with section 2703(d)(3) of the Felon Firearm Purchase Prevention Act of 1991, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 5 days have elapsed from the date the transferee furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit that—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

"(D) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; and

"(E) on application of the transferor, the Secretary has certified that compliance with subparagraph (A)(i)(III) is impracticable because of the inability of the transferor to communicate with the chief law enforcement officer because of the remote location of the licensed premises.

"(2) A chief law enforcement officer to whom a transferor has provided notice pur-

suant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 days whether the transferee has a criminal record or whether there is any other legal impediment to the transferee's receiving a handgun, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

"(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(4) The chief law enforcement officer of the place of residence of a prospective transferee of a handgun, at the request of a person who alleges the person requires access to a handgun because of a threat to the life of the person or a member of the household of the person, shall immediately meet with the person and forthwith sign a written statement described in paragraph (1)(B) unless the officer has clear and convincing evidence that no threat was made to the life of the person or any member of the household of the person.

"(5) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(6) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(7)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction.

"(B)(i) Unless the chief law enforcement officer to whom notice is provided under paragraph (1)(A)(i)(III) determines that a transaction would violate Federal, State, or local law, the officer shall, within 5 days after the date the transferee made such statement, destroy any record containing information derived from such statement.

"(ii) Information conveyed to a chief law enforcement officer under paragraph (1)(A)(i)(III)—

"(I) shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

"(II) shall not be used for any purpose other than to carry out this subsection.

"(8) A chief law enforcement officer shall not be liable in an action at law for damages for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section.

"(9) For purposes of this subsection, the term 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

"(10) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers and to the public.".

"(b) PERMANENT PROVISION.—Section 922 of title 18, United States Code, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(v)(1) Beginning on the date that the Attorney General certifies that the national instant criminal background check system is in compliance with section 2703(d)(1) of the Felon Firearm Purchase Prevention Act of 1991, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm from the business inventory of the licensee to any other person who is not such a licensee, unless—

"(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 2703 of the Felon Firearm Purchase Prevention Act of 1991; and

"(B) the system notifies the licensee that the system has not located any record that demonstrates that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section.

"(2) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

"(A) such other person presents to the licensee a valid permit or license, issued by the State or political subdivision thereof in which the transfer is to occur, that authorizes such other person to purchase, possess, or carry a firearm;

"(B) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(C) on application of the transferor, the Secretary has certified that compliance with paragraph (1)(A) is impracticable because of the inability of the transferor to communicate with the national instant criminal background check system because of the remote location of the licensees premises.

"(3) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n), and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

"(4) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n), the Secretary may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under this section, and may impose on the licensee a civil fine of not more than $5,000.

"(5) A State employee responsible for providing information to the national instant criminal background check system shall not be liable in an action at law for damages for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section.".

(c) PENALTY.—Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking "(2) or (3)" and inserting "(2), (3), or (4)"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922 (u) or (v) shall be fined not more than $1,000, imprisoned for not more than 1 year, or both.".

SEC. 2703. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

(a) ESTABLISHMENT OF SYSTEM.—The Attorney General of the United States shall establish a national instant criminal background check system that any licensee may contact for information on whether receipt of a firearm by a prospective transferee thereof would violate section 922 (g) or (n) of title 18, United States Code.

(b) EXPEDITED ACTION BY THE ATTORNEY GENERAL.—The Attorney General shall expedite—

(1) the incorporation of State criminal history records into the Federal criminal records system maintained by the Federal Bureau of Investigation;

(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(c) PROVISION OF STATE CRIMINAL RECORDS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall—

(1) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems will communicate with the national system;

(2) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on line capacity basis to the national system;

(3) notify each State of the determination made pursuant to paragraphs (1) and (2).

The Attorney General shall require as a part of the State timetable that the State achieve, by the end of 5 years after the date of enactment of this Act, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within the last 5 years.

(d) NATIONAL SYSTEM CERTIFICATION.—(1) On or after the date that is 30 months after the date of enactment of this Act, the Attorney General shall certify that—

(A) the national system has achieved at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within the last 5 years on a national average basis; and

(B) The States are in compliance with the timetable established pursuant to subsection (c).

(2) On the date of certification in paragraph (1) a State is not in compliance with the timetable established pursuant to subsection (c). The Attorney General shall certify that, after 5 years after the date of enactment of this Act, a State is not in compliance with its timetable and the date after such period that the State achieves compliance.

(3) The date on which all States are in compliance with the timetable the provisions of section 922(u) of title 18, United States Code is repealed with respect to all States.

(e) NOTIFICATION OF LICENSEES.—On establishment of the system under this section, the Attorney General shall notify each licensee of the existence and purpose of the system and the means to be used to contact the system.

(f) ADMINISTRATIVE PROVISIONS.—

(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION.—Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate section 922(g) or (n) of title 18, United States Code as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

(2) OTHER AUTHORITY.—The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION.—If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate section 922(g) or (n) of title 18, United States Code, the transferee may request the Attorney General to provide such other person with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The transferee may submit to the Attorney General information that to correct, clarify, or supplement records of the system with respect to the transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to such the transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

(h) REGULATIONS.—After 90 days notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(1) PROHIBITIONS RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS.—No department, agency, officer, or employee of the United States may—

(1) require that any record or portion thereof maintained by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited by section 922(g) or (n) of title 18, United States Code, from receiving a firearm.

(j) DEFINITIONS.—As used in this section:

(1) LICENSEE.—The term "licensee" means a licensed importer, licensed manufacturer, or licensed dealer under section 923 of title 18, United States Code.

(2) OTHER TERMS.—The terms "firearm", "licensed importer", "licensed manufacturer", and "licensed dealer" have the meanings stated in section 921(a) (3), (9), (10), and (11), respectively, of title 18, United States Code.

SEC. 2704. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS.

(a) IMPROVEMENTS IN STATE RECORDS.—

(1) use of formula grants.—Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(1) in paragraph (2) by striking "and" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; and "; and

(3) by adding at the end the following new paragraph:

"(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the records required by the Attorney General under section 3 of the Felon Firearm Purchase Prevention Act of 1991 with the Attorney General for the purpose of implementing the Felon Firearm Purchase Prevention Act of 1991.".

(2) ADDITIONAL FUNDING.—

(A) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS.—The Attorney General shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

(i) for the creation of a computerized criminal history record system or improvement of an existing system;

(ii) to improve accessibility to the national instant criminal background system; and

(iii) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subparagraph (A) a total of $100,000,000 for fiscal year 1992 and all fiscal years thereafter.

(b) WITHHOLDING STATE FUNDS.—Effective on the effective date of section 922(v) of title 18, United States Code, the Attorney General may reduce by 10 percent the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 of a State that has not provided criminal background information to the national instant criminal background check system in compliance with subsection (b)(2) and shall reallocate that amount to the other States.

(c) WITHHOLDING OF DEPARTMENT OF JUSTICE FUNDS.—If the Attorney General does not certify the national instant criminal background check system pursuant to section

(1) 30 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal beginning in the calendar year that is 30 months after the date of enactment of this Act shall be reduced by 5 percent on a monthly basis; and

(2) 42 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal beginning in the calendar year that is 42 months after the date of enactment of this Act shall be reduced by 10 percent on a monthly basis.

(d) 5 years after the date of enactment, all State laws requiring a waiting period for the purchase of firearms are preempted by the provisions of this title.

LIEBERMAN AMENDMENT NO. 460

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place in the bill, insert the following:

SEC. . IMMUNIZED TESTIMONY.

(a) AMENDMENT OF TITLE 18, UNITED STATES CODE.—Section 6002 of title 18, United States Code, is amended by—

(1) inserting "(a)" before "Whenever"; and

(2) adding at the end the following new subsection:

"(b)(1) Testimony of a witness that is based on the witness's personal knowledge, irrespective of whether the witness has been exposed to testimony compelled under subsection (a), shall not be considered to be directly or indirectly derived from or to constitute a use of such compelled testimony if—

"(A) the prosecution has made no use of the immunized testimony; and

"(B) the witness was not exposed to the immunized testimony by the prosecution or by a third party acting, directly or indirectly, at the direction of the prosecution.

"(2) This subsection does not affect the prosecution's affirmative duty to prove that the evidence it proposes to use is otherwise derived from legitimate sources wholly independent of the compelled testimony.

"(c) Subsection (b) of this section shall be applied so as to fully protect a witness's privilege against self-incrimination in all respects. If, in the particular circumstances of any case, any provision of subsection (b) cannot be applied in a manner fully consistent with a witness's privilege against self-incrimination, the provision shall be applied only to the extent it is fully consistent with the witness's privilege against self-incrimination, and the remainder of this section shall be fully applicable.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to compelled testimony that is given on or after the date of enactment of this Act.

FOWLER AMENDMENT NOS. 461 and 462

(Ordered to lie on the table.)

Mr. FOWLER submitted two amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT NO. 461

At the end of the bill, add the following new title:

TITLE XXVIII—RECREATIONAL HUNTING SAFETY AND PRESERVATION

SEC. 2801. SHORT TITLE.

This title may be cited as the "Recreational Hunting Safety and Preservation Act of 1991".

SEC. 2802. FINDINGS.

Congress finds that—

(1) recreational hunting, when carried out pursuant to law (as implemented by the regulations of Federal and State wildlife management agencies) is a necessary and beneficial element in the proper conservation and management of healthy, abundant, and biologically diverse wildlife resources;

(2) recreational hunters (because of a generally demonstrated concern with the conservation of wildlife resources and preservation of habitat necessary for the breeding and maintenance of healthy wildlife populations, and through a familiarity with the resources gained from experience in the field) are a valuable asset in ensuring enlightened public input into decisions regarding management and maintenance programs for wildlife resources and habitat;

(3)(A) recreational hunting supports industries highly significant to the national economy through sales in interstate commerce of sporting goods; and

(B) the Federal excise taxes imposed on the sales provide a major source of funding for vital programs of wildlife conservation and management;

(4) various persons are engaging in (and have announced an intent to continue to engage in) a variety of disruptive activities with the premediated purpose of preventing and interfering with the conduct of lawful recreational hunting within Federal lands, which activities—

(A) place both recreational hunters and the disruptive persons in imminent jeopardy of grave physical injury or death;

(B) disrupt the peaceful, lawful, and prudent conduct of wildlife population and habitat management programs by Federal and State wildlife management agencies; and

(C) ultimately may alter the planned program objectives, resulting in—

(i) undesirable patterns of activity within populations of wildlife;

(ii) the endangerment of the future viability of wildlife species; and

(iii) damage to habitat values;

(5) Federal lands comprise one important wildlife habitat resource that—

(A) supports many large, diverse, and vital populations of wildlife; and

(B) offers significant opportunities for legal recreational hunting as an important management tool to ensure the future viability of the wildlife populations;

(6) it is the right of citizens of the United States freely to enjoy lawful recreational hunting within Federal lands in accordance with regulations promulgated by Federal and State wildlife management agencies; and

(7) in many instances under current law, vagueness and ambiguity exist regarding the application of State laws and enforcement activities relating to the—

(A) safety of hunters; and

(B) legal rights of recreational hunters to participate peacefully in lawful hunts within Federal lands.

SEC. 2803. DEFINITIONS.

As used in this title:

(1) FEDERAL LANDS.—The term "Federal lands" means—

(A) national forests;

(B) public lands; and

(C) lands and waters included in the National Wildlife Refuge System (as established by section 4 of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd)).

(2) LAWFUL HUNT.—The term "lawful hunt" means an occasion when an individual is engaged in the taking or harvesting (or attempted taking or harvesting) through a legal means and during a specified legal season of a wildlife or fish, within a unit of the Federal lands, which activity—

(A)(i) is authorized by or licensed under the law of the State in which it takes place; or

(ii) is regulated by game or fishing seasons established by the State in which it takes place;

(B) is not prohibited by a law of the United States; and

(C) does not infringe upon a right of an owner of private property.

(3) NATIONAL FOREST.—The term "national forest" means land included in the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))).

(4) PERSON.—The term "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

(5) PUBLIC LANDS.—The term "public lands" has the same meaning as is provided in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(e)).

(6) SECRETARY.—The term "Secretary" means—

(A) the Secretary of Agriculture with respect to national forests; and

(B) the Secretary of the Interior with respect to—

(i) public lands; and

(ii) lands and waters included in the National Wildlife Refuge System.

SEC. 2804. OBSTRUCTION OF A LAWFUL HUNT.

(a) VIOLATION.—It is unlawful for a person knowingly and with the intent of obstructing, impeding, or interfering with a lawful hunt by an individual to—

(1) obstruct, impede, or otherwise interfere with a lawful hunt by an individual;

(2) scare, herd, harass, decoy, or otherwise engage in activities designed to affect wildlife in a unit of the Federal lands;

(3) engage in activities that prevent or impede the reasonable and usual means of access by those who intend to participate in a lawful hunt, whether the activities occur within a unit of the Federal lands or upon a public or private road, highway, path, trail, or other normal route of access to a unit of the Federal lands;

(4) take or abuse property, equipment, or hunting dogs being used in conjunction with a lawful hunt; or

(5) enter into a unit of the Federal lands, travel in interstate commerce, use the United States mails or an instrumentality of interstate telephonic or electronic communications, or transport or cause to be transported in interstate commerce a material or item, to further—

(A) a scheme or effort to obstruct, impede, or otherwise interfere with a lawful hunt; or

(B) the efforts of another person to obstruct, impede, or interfere with a lawful hunt.

(b) MULTIPLE VIOLATIONS.—The Secretary may consider participation by a person in more than one of the activities described in this section to constitute multiple violations.

SEC. 2805. CIVIL PENALTIES.

(a) IN GENERAL.—A person who engages in an activity described in section 2804 shall be assessed a civil penalty of not less than $500, and not more than $5,000, for each violation.

(b) VIOLATION INVOLVING FORCE OR VIOLENCE.—Upon a determination by a court that the activity involved the use of force or violence, or the threatened use of force or violence, against the person or property of another person, a person who engages in an activity described in section 2804 shall be assessed a civil penalty of not less than $1,000, and not more than $10,000, for each violation.

(C) RELATIONSHIP TO OTHER PENALTIES.—The penalties established by this section shall be in addition to other criminal or civil penalties that may be levied against the person as a result of an activity in violation of section 2804.

(d) PROCEDURE.—

(1) COMPLAINTS FROM GOVERNMENT AGENTS.—Upon receipt of a written complaint from an officer, employee, or agent of a Federal agency that a person violated section 2804, the Secretary shall—

(A) forward the complaint to the United States Attorney for the Federal judicial district in which the violation is alleged to have occurred; and

(B) request the Attorney General of the United States to institute a civil action for the imposition and collection of the civil penalty specified in subsection (a) or (b).

(2) COMPLAINTS FROM INDIVIDUALS.—Upon receipt of a sworn affidavit from an individual and a determination by the Secretary that the statement contains sufficient factual data to create a reasonable belief that a violation of section 2804 has occurred, the Secretary shall—

(A) forward a complaint to the United States Attorney for the Federal judicial district in which the violation is alleged to have occurred; and

(B) request the Attorney General of the United States to institute a civil action for the imposition and collection of the civil penalty specified in subsection (a) or (b).

(e) USE OF PENALTY MONEY COLLECTED.—After deduction of costs attributable to collection, money collected from penalties shall be—

(1) deposited into the trust fund established pursuant to the Act entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes", approved September 2, 1937 (16 U.S.C. 669) (commonly known as the "Pitman-Robertson Wildlife Restoration Act"), to support the activities authorized by that Act and undertaken by State wildlife management agencies; or

(2) used in such other manner as the Secretary determines will enhance the funding and implementation of—

(A) the North American Waterfowl Management Plan signed by the Secretary of the Interior and the Minister of Environment for Canada in May 1986; or

(B) a similar program that the Secretary determines will enhance wildlife management—

(i) within Federal lands; or

(ii) on private or State-owned lands when the efforts will also provide a benefit to wildlife management objectives within Federal lands.

SEC. 2806. OTHER RELIEF.

(a) INJUNCTIVE RELIEF.—Injunctive relief against a violation of section 2804 may be sought by—

(1) the head of a State agency with jurisdiction over fish or wildlife management;

(2) the Attorney General of the United States; or

(3) any person who is or would be adversely affected by the violation, or a hunting or

sportsman's organization to which the person belongs.

(b) DAMAGES AND ATTORNEY'S FEES.—Any person who is or would be adversely affected by a violation of section 2804, or a hunting or sportsman's organization to which the person belongs, may bring a civil action to recover—

(1) actual and punitive damages; and

(2) reasonable attorney's fees.

SEC. 2807. RELATIONSHIP TO STATE AND LOCAL LAW AND CIVIL ACTIONS.

(a) LAW OR ORDINANCE.—This title is not intended to preempt a State law or local ordinance that provides for civil or criminal penalties for a person who obstructs or otherwise interferes with a lawful hunt.

(b) CIVIL ACTION.—The bringing of an action pursuant to this title shall not prevent an independent action against a person under a State law or local ordinance.

SEC. 2808. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this title.

AMENDMENT NO. 462

On page 100, line 16, please insert the following language as new subsection (2):

"Such training programs shall include a drug education program which:

"(a) trains Police Corps participants concerning drug and alcohol abuse education and prevention;

"(b) develops a framework for their collaboration with the local school systems and community resources to reduce the availability and demand for drugs by teaching students to recognize and resist pressures to experiment with drugs and alcohol. This may specifically include instruction about:

"(i) understanding the consequences of drug abuse;

"(ii) resistance techniques;

"(iii) managing stress without taking drugs;

"(iv) positive alternatives to drug abuse behavior;

"(v) self-esteem building activities;

"(vi) resistance to peer pressure and gang pressure;

"(vii) decision-making and risk taking;

"(viii) interpersonal and communications skills.".

On page 106, line 9, after the period insert the following: "This section authorizes sums as may be necessary to implement this program.".

BIDEN AMENDMENTS NOS. 463 THROUGH 467

(Ordered to lie on the table.)

Mr. BIDEN submitted five amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT NO. 463

Add at the appropriate place in the bill:

TITLE XX—PROTECTION OF CRIME VICTIMS

SEC. 2001. SHORT TITLE.

This title may be cited as the "Victims' Rights and Restitution Act of 1991".

SEC. 2002. AVAILABLE OF FUNDS.

Section 1402 of the Victims Crime Act of 1984, as amended, is amended—

(a) by striking subsection (c) and redesignating (d), (e), (f) and (g) as subsections (c), (d), (e), and (f), respective; and

(b) by adding a new subsection (c) to read as follows:

"(c) Availability of funds for expenditure; grant program percentages

"(1) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.

"(2) The Funds shall be available as follows:

"(A) Of the first $100,000,000 deposited in the Fund in a particular fiscal year—

"(i) 49.5 percent shall be available for grants under section 10602 of this title;

"(ii) 45 percent shall be available for grants under section 10603(a) of this title;

"(iii) 1 percent shall be available for grants under section 10603(c) of this title; and

"(iv) 4.5 percent shall be available for grants as provided in section 10603a of this title.

"(B) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants as provided in section 10603a of this title.

"(D) The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 10603a of this title.

"(E) The next $2,200,000 deposited in the Fund in a particular fiscal year shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

"(F) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under subparagraphs (A) through (E) shall be available as follows:

"(i) 47.5 percent shall be available for grants under section 10602 of this title;

"(ii) 47.5 percent shall be available for grants under section 10603(a) of this title; and

"(iii) 5 percent shall be available for grants under section 10603(c)(1)(B) of this title.

SEC. 2003. AMENDMENT OF RESTITUTION PROVISIONS.

(A) ORDER OF RESTITUTION.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a) by—

(A) striking "(a) The court" and inserting "(a)(1) The court";

(B) striking "may order" and inserting "shall order"; and

(C) adding at the end thereof the following new paragraph:

"(2) In addition to ordering restitution of the victim of the offense of which a defendant is convicted, a court may order restitution of any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—

"(A) the criminal episode during which the offense occurred; or

"(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.";

(2) in subsection (b)(1)(A) by striking "impractical" and inserting "impracticable";

(3) in subsection (b)(2) by inserting "emotional or" after "resulting in";

(4) in subsection (c) by striking "If the Court decides to order restitution under this section, the" and inserting "The";

(5) by striking subsections (d), (e), (f), (g), and (h); and

(6) by adding at the end thereof the following new subsections:

"(d)(1) The court shall order restitution to a victim in the full amount of the victim's losses as determined by the court and without consideration of—

"(A) the economic circumstances of the offender; or

"(B) the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source.

"(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

"(A) the financial resources and other assets of the offender;

"(B) projected earnings and other income of the offender; and

"(C) any financial obligations of the offender, including obligations to dependents.

"(3) A restoration order may direct the offender to make a single, lump-sum payment, partial payment at specified intervals, or such in-kind payments as may be agreeable to the victim and the offender.

"(4) An in-kind payment described in paragraph (3) may be in the form of—

"(A) return of property;

"(B) replacement of property; or

"(C) services rendered to the victim or to a person or organization other than the victim.

"(e) When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

"(f) When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution of each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

"(g)(1) If the victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

"(2) The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss, at which time a person that has provided compensation to the victim shall be entitled to receive any payments remaining to be paid under the restitution order.

"(3) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(h) A restitution order shall provide that—

"(1) all fines, penalties, costs, restitution payments and other forms of transfers of money or property made pursuant to the sentence of the court shall be made by the offender to the clerk of the court for accounting and payment by the clerk in accordance with this subsection;

"(2) the clerk of the court shall—

"(A) log all transfers in a manner that tracks the offender's obligations and the current status in meeting those obligations, unless, after efforts have been made to enforce the restitution order and it appears that compliance cannot be obtained, the court de-

termines that continued recordkeeping under this subparagraph would not be useful;

"(B) notify the court and the interested parties when an offender is 90 days in arrears in meeting those obligations; and

"(C) disburse money received from an offender so that each of the following obligations is paid in full in the following sequence:

"(i) a penalty assessment under section 3013 of title 18, United States Code;

"(ii) restitution of all victims; and

"(iii) all other fines, penalties, costs, and other payments required under the sentence; and

"(3) the offender shall advise the clerk of the court of any change in the offender's address during the term of the restitution order.

"(i) A restitution order shall constitute a lien against all property of the offender and may be recorded in any Federal or State office for the recording of liens against real or personal property.

"(j) Compliance with the schedule of payment and other terms of a restitution order shall be a condition of any probation, parole, or other form of release of an offender. If a defendant fails to comply with a restitution order, the court may revoke probation or a term of supervised release, modify the term or conditions of probation or a term of supervised release, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, or take any other action necessary to obtain compliance with the restitution order. In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the restitution order.

"(k) An order of restitution may be enforced—

"(1) by the United States—

"(A) in the manner provided for the collection and payment of fines in subchapter (B) of chapter 229 of this title; or

"(B) in the same manner as a judgment in a civil action; and

"(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

"(l) A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.".

(b) PROCEDURE FOR ISSUING ORDER OF RESTITUTION.—Section 3664 of title 18, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d);

(3) by amending subsection (a), as redesignated by paragraph (2), to read as follows:

"(a) The court may order the probation service of the court to obtain information pertaining to the amount of loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs."; and

(4) by adding at the end thereof the following new subsection:

"(e) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.".

AMENDMENT NO. 464

Add at the appropriate place in the bill:

TITLE XX—PROTECTION OF CRIME VICTIMS

SEC. 2001. SHORT TITLE.

This title may be cited as the "Victims' Rights and Restitution Act of 1991".

SEC. 2002. AVAILABILITY OF FUNDS.

Section 1402 of the Victims of Crime Act of 1984, as amended, is amended—

(a) by striking subsection (c) and redesignating (d), (e), (f) and (g) as subsections (c), (d), (e), and (f), respective; and

(b) by adding a new subsection (c) to read as follows:

"(c) Availability of funds for expenditure; grant program percentages

"(1) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.

"(2) The Fund shall be available as follows:

"(A) Of the first $100,000,000 deposited in the Fund in a particular fiscal year—

"(i) 49.5 percent shall be available for grants under section 10602 of this title;

"(ii) 45 percent shall be available for grants under section 10603(a) of this title;

"(iii) 1 percent shall be available for grants under section 10603(c) of this title; and

"(iv) 4.5 percent shall be available for grants as provided in section 10603a of this title.

"(B) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants as provided in section 10603a of this title.

"(D) The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 10603(a) of this title.

"(E) The next $2,200,000 deposited in the Fund in a particular fiscal year shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

"(F) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under subparagraphs (A) through (E) shall be available as follows:

"(i) 47.5 percent shall be available for grants under section 10602 of this title;

"(ii) 47.5 percent shall be available for grants under section 10603(a) of this title; and

"(iii) 5 percent shall be available for grants under section 10603(c)(10(B) of this title.

SEC. 2003. AMENDMENT OF RESTITUTION PROVISIONS.

(a) ORDER OF RESTITUTION.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a) by—

(A) striking "(a) The court" and inserting "(a)(1) The court";

(B) striking "may order" and inserting "shall order"; and

(C) adding at the end thereof the following new paragraph:

"(2) In addition to ordering restitution of the victim of the offense of which a defendant is convicted, a court may order restitution of any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—

"(A) the criminal episode during which the offense occurred; or

"(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.";

(2) in subsection (b)(1)(A) by striking "impractical" and inserting "impracticable";

(3) in subsection (b)(2) by inserting "emotional or" after "resulting in";

(4) in subsection (c) by striking "If the Court decides to order restriction under this section, the" and inserting "The";

(5) by striking subsections (d), (e), (f), (g), and (h); and

(6) by adding at the end thereof the following new subsections:

"(d)(1) The courts shall order restitution to a victim in the full amount of the victim's losses as determined by the court and without consideration of—

"(A) the economic circumstances of the offender; or

"(B) the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source.

"(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

"(A) the financial resources and other assets of the offender;

"(B) projected earnings and other income of the offender; and

"(C) any financial obligations of the offender, including obligations to dependents.

"(3) A restoration order may direct the offender to make a single, lump-sum payment, partial payment at specified intervals, or such in-kind payments as may be agreeable to the victim and the offender.

"(4) An in-kind payment described in paragraph (3) may be in the form of—

"(A) return of property;

"(B) replacement of property; or

"(C) services rendered to the victim or to a person or organization other than the victim.

"(e) When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

"(f) When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution of each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

"(g)(1) If the victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

"(2) The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss, at which time a person that has provided compensa-

tion to the victim shall be entitled to receive any payments remaining to be paid under the restitution order.

"(3) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(h) A restitution order shall provide that—

"(1) all fines, penalties, costs, restitution payments and other forms of transfers of money or property made pursuant to the sentence of the court shall be made by the offender to the clerk of the court for accounting and payment by the clerk in accordance with this subsection;

"(2) the clerk of the court shall—

"(A) log all transfers in a manner that tracks the offender's obligations and the current status in meeting those obligations, unless, after efforts have been made to enforce the restitution order and it appears that compliance cannot be obtained, the court determines that continued recordkeeping under this subparagraph would not be useful;

"(B) notify the court and the interested parties when an offender is 90 days in arrears in meeting those obligations; and

"(C) disburse money received from an offender so that each of the following obligations is paid in full in the following sequence:

"(i) a penalty assessment under section 3013 of title 18, United States Code;

"(ii) restitution of all victims; and

"(iii) all other fines, penalties, costs, and other payments required under the sentence; and

"(3) the offender shall advise the clerk of the court of any change in the offender's address during the term of the restitution order.

"(i) A restitution order shall constitute a lien against all property of the offender and may be recorded in any Federal or State office for the recording of liens against real or personal property.

"(j) Compliance with the schedule of payment and other terms of a restitution order shall be a condition of any probation, parole, or other form of release of an offender. If a defendant fails to comply with a restitution order, the court may revoke probation or a term of supervised release, modify the term or conditions of probation or a term of supervised release, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, or take any other action necessary to obtain compliance with the restitution order. In detemining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the restitution order.

"(k) An order of restitution may be enforced—

"(1) by the United States—

"(A) in the manner provided for the collection and payment of fines in subchapter (B) of chapter 229 of this title; or

"(B) in the same manner as a judgment in a civil action; and

"(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

"(l) A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.".

(b) PROCEDURE FOR ISSUING ORDER OF RESTITUTION.—Section 3664 of title 18, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d);

(3) by amending subsection (a), as redesignated by paragraph (2), to read as follows:

"(a) The court may order the probation service of the court to obtain information pertaining to the amount of loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs,"; and

(4) by adding at the end thereof the following new subsection:

"(e) The court may refer any issue arising the connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.".

AMENDMENT NO. 465

Add at the appropriate place in the bill:

TITLE XVIII—DRUNK DRIVING CHILD PROTECTION ACT

SEC. 1801. SHORT TITLE.

This title may be cited as the "Drunk Driving Child Protection Act of 1991".

SEC. 1802. STATE LAWS APPLIED IN AREAS OF FEDERAL JURISDICTION.

Section 13(b) of title 18, United States Code, is amended by—

(1) striking "For purposes" and inserting "(1) Subject to paragraph (2) and for purposes"; and

(2) adding at the end thereof the following new paragraph:

"(2)(A) In addition to any term of imprisonment provided for operating a motor vehicle under the influence of a drug or alcohol under the law of a State, territory, possession, or district, the punishment for such an offense under this section shall include an additional term of imprisonment of not more than 1 year, or if serious bodily injury of a minor is caused, 5 years, or if death of a minor is caused, 10 years, and an additional fine of not more than $1,000, or both, if—

"(i) a minor (other than the offender) was present in the motor vehicle when the offense was committed; and

"(ii) the law of the State, territory, possession, or district in which the offense occurred does not provide an additional term of imprisonment under the circumstances described in clause (i).

"(B) For the purposes of subparagraph (A), the term 'minor' means a person less than 18 years of age.".

SEC. 1803. COMMON CARRIERS.

Section 342 of title 18, United States Code, is amended by—

(1) inserting "(a) before "Whoever"; and

(2) adding at the end thereon the following new subsection:

"(b)(1) In addition to any term of imprisonment imposed for an offense under subsection (a), the punishment for such an offense shall include an additional term of imprisonment of not more than 1 year, or if serious bodily injury of a minor is caused, 5 years, or if death of a minor is caused, 10 years, and an additional fine of not more than $1,000, or both, if a minor (other than the offender) was present in the common carrier when the offense was committed.

"(2) For the purposes of paragraph (1), the term 'minor' means a person less than 18 years of age.".

SEC. 1804. SENSE OF CONGRESS CONCERNING CHILD CUSTODY AND VISITATION RIGHTS.

It is the sense of the Congress that in determining child custody and visitation rights, the courts should take into consideration the history of drunk driving that any person involved in the determination may have.

AMENDMENT NO. 466

Add at the appropriate place in the bill

TITLE IX—POLICE OFFICERS' BILL OF RIGHTS ACT OF 1991

SEC. 901. SHORT TITLE.

This title may be cited as the "Police Officer's Bill of Rights Act of 1991".

SEC. 902. RIGHTS OF LAW ENFORCEMENT OFFICERS.

Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781 et seq.) is amended by adding at the end thereof the following new section:

"RIGHTS OF LAW ENFORCEMENT OFFICERS

"(b) RIGHTS OF LAW ENFORCEMENT OFFICERS WHILE UNDER INVESTIGATION.—When a law enforcement officer is under investigation or is subjected to questioning for any reason, other than in connection with an investigation or action described in subsection (h), under circumstances that could lead to disciplinary action, the following minimum standards shall apply:

"(1) Questioning of the law enforcement officer shall be conducted at a reasonable hour, preferably when the law enforcement officer is on duty, unless exigent circumstances otherwise require.

"(2) Questioning of the law enforcement officer shall take place at the offices of those conducting the investigation or the place where such law enforcement officer reports for duty unless the officer consents in writing to being questioned elsewhere.

"(3) The law enforcement officer under investigation shall be informed, at the commencement of any questioning, of the name, rank, and command of the officer conducting the questioning.

"(4) During any single period of questioning of the law enforcement officer, all questions shall be asked by or through a single investigator.

"(5) The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any questioning.

"(6) Any questioning of a law enforcement officer in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods for the rest and personal necessities of the law enforcement officer.

"(7) No threat against, harassment of, or promise or reward (except an officer of immunity from prosecution) to any law enforcement officer shall be made in connection with an investigation to induce the answering of any question.

"(8) All questioning of any law enforcement officer in connection with the investigation shall be recorded in full in writing or by electronic device, and a copy of the transcript shall be made available to the officer under investigation.

"(9) The law enforcement officer under investigation shall be entitled to the presence of counsel (or any other one person of the officer's choice) at any questioning of the officer, unless the officer consents in writing to being questioned outside the presence of counsel.

"(10) At the conclusion of the investigation, the person in charge of the investigation shall inform the law enforcement officer under investigation, in writing, of the investigative findings and any recommendation for disciplinary action that the person intends to make.

"(11) A law enforcement officer who brought before a disciplinary hearing shall be provided access to all transcripts, records, written statements, written reports and analyses and video tapes pertinent to the case that—

"(A) contain exculpatory information;

"(B) are intended to support any disciplinary action; or

"(C) are to be introduced in the disciplinary hearing.

"(c) OPPORTUNITY FOR A HEARING.—(1) Except in a case of summary punishment or emergency suspension described in subsection (d), if an investigation of a law enforcement officer results in a recommendation of disciplinary action, the law enforcement agency shall notify the law enforcement officer that the officer is entitled to a hearing on the issues by a hearing officer or board.

"(2)(A) Subject to subparagraph (B), a State shall determine the composition of a disciplinary hearing board and the procedures for a disciplinary hearing.

"(B) A disciplinary hearing board that includes employees of the law enforcement agency of which the officer who is the subject of the hearing is a member shall include at least one law enforcement officer of equal or lesser rank to the officer who is the subject of the hearing.

"(3) A penalty greater than that which was recommended by the trial board cannot be imposed upon the officer.

"(d) SUMMARY PUNISHMENT AND EMERGENCY SUSPENSION.—(1) This section does not preclude a State from providing for summary punishment or emergency suspension for misconduct by a law enforcement officer.

"(2) An emergency suspension shall not affect or infringe on the health benefits of a law enforcement officer.

"(e) NOTICE OF DISCIPLINARY ACTION.—When disciplinary action is to be taken against a law enforcement officer, the officer shall be notified of the action and the reasons therefor a reasonable time before the action takes effect.

"(f) RETALIATION FOR EXERCISING RIGHTS.—There shall be no penalty or threat of penalty against a law enforcement officer for the exercise of the officer's rights under this section.

"(g) OTHER REMEDIES NOT IMPAIRED.—(1) Nothing in this section shall be construed to impair any other legal remedy that a law enforcement officer has with respect to any rights under this section.

"(2) A law enforcement officer may waive any of the rights guaranteed by this section.

"(h) APPLICATION OF SECTION.—This section does not apply in the case of—

"(1) an investigation of criminal conduct by a law enforcement officer; or

"(2) a nondisciplinary action taken in good faith on the basis of a law enforcement officer's employment-related performance.

"(i) DEFINITIONS.—For the purposes of this section—

"(1) the term 'disciplinary action' means the suspension, demotion, reduction in pay or other employment benefit, dismissal, transfer, or similar action taken agianst a law enforcement officer as punishment for misconduct;

"(2) the term 'emergency suspension' means temporary action imposed by the head of the law enforcement agency when that official determines that the action is in the best interests of the public;

"(3) the term 'summary punishment' means punishment imposed for a minor violation of a law enforcement agency's rules and regulations that does not result in disciplinary action;

"(4) the term 'law enforcement agency' means a public agency charged by law with the duty to investigate crimes or apprehend or hold in custody persons charged with or convicted of crimes; and

"(5) the term 'law enforcement officer' means a full-time police officer, sheriff, or correctional officer of a law enforcement agency.

"(j) PROHIBITION OF ADVERSE MATERIAL IN OFFICER'S FILE.—A law enforcement agency shall not insert any adverse material into the file of any law enforcement officer unless the officer has had an opportunity to review and comment in writing on the adverse material.

"(k) DISCLOSURE OF PERSONAL ASSETS.—A law enforcement officer shall not be required or requested to disclose any item of the officer's personal property, income, assets, sources of income, debts, personal or domestic expenditures (including those of any member of the officer's household), unless

"(1) the information is necessary in investigating a violation of any Federal, State, or local law, rule, or regulation with respect to the performance of official duties; or

"(2) such disclosure is required by Federal, State, or local law.

"(l) ENFORCEMENT OF PROTECTIONS FOR LAW ENFORCEMENT OFFICERS.—(1) A State shall have not more than 2 legislative sessions to enact a Law Enforcement Officer's Bill of Rights that provides rights for law enforcement officers that are substantially similar to the rights afforded under this section.

"(2) After the expiration of the time limit described in paragraph (1), a law enforcement officer shall have a cause of action in State court for the recovery of pecuniary and other damages and full reinstatement against a law enforcement agency that materially violates the rights afforded by this section.

"(3) The sovereign immunity of a State shall not apply in the case of a violation of the rights afforded by this section.

"(m) STATES' RIGHTS.—This section does not preempt State law or collective bargaining agreements or discussions during the collective bargaining process that provide rights for law enforcement officers that are substantially similar to the rights afforded by this section.".

TITLE X—FEDERAL LAW ENFORCEMENT AGENCIES

SEC. 1001. SHORT TITLE.

This title maybe cited as the "Federal Law Enforcement Act of 1991".

SEC. 1002. AUTHORIZATION FOR FEDERAL LAW ENFORCEMENT AGENCIES.

There is authorized to be appropriated for fiscal year 1992, $345,500,000 (which shall be in addition to any other appropriations) to be allocated as follows:

(1) For the Drug Enforcement Administration, $100,500,000, which shall include:

(A) not to exceed $45,000,000 to hire, equip and train not less than 350 agents and necessary support personnel to expand DEA investigations and operations against drug trafficking organizations in rural areas;

(B) not to exceed $25,000,000 to expand DEA State and Local Task Forces, including payment of state and local overtime, equipment and personnel costs; and

(C) not to exceed $5,000,000 to hire, quip and train not less than 50 special agents and

AMENDMENT NO. 467

Add at the appropriate place in the bill:

TITLE XII—PUNISHMENT OF GUN CRIMINALS

SEC. 1201. SHORT TITLE.

This title may be cited as the "Gun Criminals Punishment Act of 1991".

Subtitle A—Increased Penalties for Gun Offenses

SEC. 1211. DEATH PENALTY FOR GUN MURDERS.

Section 924(c) of title 18, United States Code, is amended by—

(1) inserting "(A)" after "(1)";

(2) designating the second sentence as subparagraph (B);

(3) designating the third and fourth sentences as subparagraph (D); and

(4) inserting before subparagraph (D) the following:

"(C) Whoever violates the terms of subparagraph (A) and discharges a firearm that kills another person, shall, if the killing—

"(A) is a first degree murder as defined in section 1111(a) of this title, be punished by death or imprisonment for any term of years or for life, fined under this title, or both; or

"(B) is a murder other than a first degree murder as defined in section 1111(a) of this title, be fined under this title, imprisoned for any term of years or for life, or both.".

SEC. 1212. INCREASED PENALTIES FOR VIOLENT GUN CRIMES.

(a) IN GENERAL.—Section 924(c)(1) of title 18, United States Code, is amended by—

(1) striking subparagraph (A) and inserting the following:

"(A) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States—

"(i) discharges, uses, carries, or otherwise possesses a firearm shall, in addition to the penalties already provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for a term from 5 to 10 years;

"(ii) discharges, uses, carries, or otherwise possesses a firearm that is an assault weapon, short-barreled rifle, or short-barreled shotgun, shall, in addition to the penalties already provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for a term from 10 to 15 years; or

"(iii) discharges, uses, carries, or otherwise possesses a firearm that is a machinegun, a destructive device, or is equipped with a firearm silencer or firearm muffler, shall be sentenced to imprisonment for 30 years,"; and

(2) striking subparagraph (B), as designated by section 1211 of this Act, and inserting the following:

"(B) In the case of a second conviction under this subsection, such person shall be sentenced to imprisonment for 20 years and, if the firearm is an assault weapon, a short-barreled rifle, a short-barreled shotgun, a machinegun, a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment.".

(b) SENTENCING GUIDELINES FOR NEW PENALTIES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission, shall promulgate guidelines or amend existing guidelines to provide for a sentencing enhancement in accord with the provisions of subsection (c)(1) of section 924 of title 18, United States Code.

Subtitle B—Firearms and Related Amendments

SEC. 1221. POSSESSION OF AN EXPLOSIVE DURING THE COMMISSION OF A FELONY.

(a) POSSESSION OF EXPLOSIVES.—Section 844(h) of title 18, United States Code, is amended by—

(1) striking "carries an explosive during" and inserting "uses, carries, or otherwise possesses an explosive during"; and

(2) striking "used or carried" and inserting "used, carried, or possessed".

(b) PENALTY.— Section 844(h) of title 18, United States Code, is amended by striking "ten years" and inserting "twenty years".

SEC. 1222. CLARIFICATION OF DEFINITION OF CONVICTION.

Section 921(a)(20) of title 18, United States Code, is amended by adding at the end the following: "Notwithstanding the previous sentence, if the conviction was for a violent felony involving the threatened or actual use of a firearm or explosive or was for a serious drug offense, as defined in section 924(e) of this title, the person shall be considered convicted for purposes of this chapter irrespective of any pardon, setting aside, expunction or restoration of civil rights.".

SEC. 1223. PERMITTING CONSIDERATION OF PRETRIAL DETENTION FOR CERTAIN FIREARMS AND EXPLOSIVES OFFENSES.

Section 3142(f)(1) of title 18, United States Code, is amended by—

(1) striking "or" after the semicolon in subparagraph (C);

(2) redesignating subparagraph (D) as subparagraph (E); and

(3) inserting after subparagraph (C) the following:

"(D) an offense under section 844(a) that is a violation of subsection (d) (h), or (i) of section 842 or an offense under section 924(a) that is a violation of title 18, United States Code, section 922 (d), (g), (h), (i), (j), or (o), or an offense under section 844(d), or 924 (b), (g), (h), (i) of this title or section 922 (s) or (t).".

SEC. 1224. SMUGGLING FIREARMS IN AID OF DRUG TRAFFICKING.

Section 924 of title 18, United States Code, is amended by adding at the end thereof the following:

"(m) Whoever, with the intent to engage in or to promote conduct which—

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

"(3) constitutes a crime of violence (as defined in subsection (c)(3);

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned for not more than ten years, fined under this title, or both.".

SEC. 1225. THEFT OF FIREARMS AND EXPLOSIVES.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding at the end thereof:

"(j) whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not less than 2 or more than 10 years, and may be fined under this title, or both.".

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, is amended by adding at the end the following:

"(k) Whoever steals any explosive materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not less than 2 or more than 10 years, or fined under this title, or both.".

SEC. 1226. CONFORMING AMENDMENT PROVIDING MANDATORY REVOCATION OF SUPERVISED RELEASE FOR POSSESSION OF A FIREARM.

Section 3583 of title 18, United States Code is amended by adding at the end thereof the following new subsection:

"(h) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the court has provided, as a condition of supervised release, that the defendant refrain from possessing a firearm, and if the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of supervised release, the court shall, after a hearing pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation, revoke the term of supervised release and, subject to the limitations of paragraph (e)(3) of this section, require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision.".

SEC. 1227. INCREASED PENALTY FOR KNOWINGLY FALSE, MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER.

Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (a)(1)(B), by striking out "(a)(6),"; and

(2) in subsection (a)(2), by inserting "(a)(6)," after "subsections".

SEC. 1228. STATUTE OF LIMITATIONS FOR CERTAIN GANGSTER WEAPON OFFENSES.

Section 6531 of the Internal Revenue Code of 1986 (26 U.S.C. 6531, relating to periods of limitation of criminal prosecutions) is amended by striking "except that the period of limitation shall be six years" and inserting in lieu thereof "except that the period of limitation shall be five years for offenses described in section 5861 (relating to firearms) and the period of limitation shall be six years".

SEC. 1229. POSSESSION OF EXPLOSIVES BY FELONS AND OTHERS.

Section 842(i) of title 18, United States Code, is amended by inserting "or possess" after "to receive".

SEC. 1230. SUMMARY DESTRUCTION OF EXPLOSIVES SUBJECT TO FORFEITURE.

Section 844(c) of title 18, United States Code, is amended by redesignating subsection (c) as subsection (c)(1) and by adding paragraphs (2) and (3) as follows:

"(2) Notwithstanding the provisions of paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture where it is impracticable or unsafe to remove the materials to a place of storage, or where it is unsafe to store them, the seizing officer is authorized to destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least one credible witness. The seizing officer shall make a report of the seizure and take samples as the Secretary may by regulation prescribe.

"(3) Within sixty days after any destruction made pursuant to paragraph (2), the owner of, including any person having an interest in, the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that—

"(A) the property has not been used or involved in a violation of law; or

"(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.".

SEC. 1231. SUMMARY FORFEITURE OF UNREGISTERED NATIONAL FIREARMS ACT WEAPONS.

Section 5872 of title 26, United States Code, is amended by redesignating subsection (a) as subsection (a)(1) and by adding paragraphs (2) and (3) to read as follows:

"(2) UNREGISTERED NATIONAL FIREARMS ACT WEAPONS.—Notwithstanding the provisions of paragraph (1), the provisions of sections 7323 and 7325 shall not apply to any firearm which is not registered in the National Firearms Registration and Transfer Record pursuant to section 5841. No property rights shal exist in any such unregistered firearm and it shall be summarily forfeited to the United States.

"(3) RIGHTS OF INNOCENT OWNERS.—Within one year after the summary forfeiture made pursuant to paragraph (2) the owner of, including any person having an interest in, the property seized may make application to the Secretary for reimbursement of the value of such property. If the claimant establishes to the satisfaction of the Secretary that—

"(A) such property has not been involved or used in a violation of law; or

"(B) any unlawful involvement or use of such property had been without the claimant's consent, knowledge, or willful blindness,

the Secretary shall make an allowance to such claimant not exceeding the value of the property so forfeited.".

SEC. 1232. DISPOSITION OF FORFEITED FIREARMS.

Subsection 5872(b) of the Internal Revenue Code of 1986 (26 U.S.C. 5872(b)), is amended to read as follows:

"(b) DISPOSAL.—In the case of the forfeiture of any firearm, where there is no remissin or mitigation of forfeiture thereof—

"(1) The Secretary may retain the firearm for official use of the Department of the Treasury or, if not so retained, offer to transfer the weapon without charge to any other executive department or independent establishment of the Government for official use by it and, if the offer is accepted, so transfer the firearm;

"(2) If the firearm is not disposed of pursuant to paragraph (1), is a firearm other than a machinegun or a firearm forfeited for a violation of this chapter, is a firearm that in the opinion of the Secretary is not so defective that its disposition pursuant to this paragraph would create an unreasonable risk of a malfunction likely to result in death or bodily injury, and is a firearm which (in the judgment of the Secretary, taking into consideration evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commer-

cial channels is substantially less) derives a substantial part of its monetary value from the fact that it is novel, rare, or because of its association with some historical figure, period, or event the Secretary may sell such firearm, after public notice, at public sale to a dealer licensed under the provisions of chapter 44 of title 18, United States Code;

"(3) If the firearm has not been disposed of pursuant to paragraphs (1) or (2), the Secretary shall transfer the firearm to the Administrator of General Services, General Services Administrator, who shall destroy or provide for the destruction of such firearm; and

"(4) No decision or action of the Secretary pursuant to this subsection shall be subject to judicial review.".

SEC. 1233. ELIMINATION OF OUTMODED LANGUAGE RELATING TO PAROLE.

(a) Section 924(e)(1) of title 18, United States Code, is amended by striking ", and such person shall not be eligible for parole with respect to the sentence imposed under this subsection".

(b) Section 924(c)(1) of title 18, United States Code, is amended by striking "No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.".

SEC. 1234. POSSESSION OF STOLEN FIREARMS.

Section 922(j) of title 18, United States Code, is amended by inserting "possess," before "receive,".

SEC. 1235. USING A FIREARM IN THE COMMISSION OF COUNTERFEITING OR FORGERY.

Section 924(c)(1) of title 18, United States Code, is amended by inserting "or during and in relation to any felony punishable under chapter 25 (relating to counterfeiting and forgery) of this title" after "for which he may be prosecuted in a court of the United States,".

SEC. 1236. MANDATORY PENALTY FOR FIREARMS POSSESSION BY VIOLENT FELONS AND SERIOUS DRUG OFFENDERS.

(a) Section 924(a)(1) of title 18, United States Code, is amended by inserting a comma before "or both" and by inserting before the period at the end thereof the following: ", and if the violation is a violation of subsection (g)(1) of section 922 by a person who has a previous conviction for a violent felony or a serious drug offense as defined in subsection (e)(2) of this section, a sentence imposed under this paragraph shall include a term of imprisonment of not less than five years.".

SEC. 1237. REPORTING OF MULTIPLE FIREARMS SALES.

Subsection 923(g)(1)(D)(3) of title 18, United States Code, is amended—

(1) by deleting the phrase "five consecutive business days" and inserting in lieu thereof "thirty consecutive days"; and

(2) by adding a new sentence at the end thereof as follows: "Each licensee shall forward a copy of the report to the chief law enforcement officer of the place of residence of the unlicensed person not later than the close of business on the date that the multiple sale or disposition occurs.".

SEC. 1238. POSSESSION OF STOLEN FIREARMS AND EXPLOSIVES.

(a) FIREARMS.—Section 922(j) of title 18, United States Code, is amended by inserting "possess," before "conceal";

(b) EXPLOSIVES.—Section 842(h) of title 18, United States Code, is amended by inserting "possess," before "conceal".

SEC. 1239. RECEIPT OF FIREARMS BY NONRESIDENT.

Section 922(a) of title 18, United States Code, is amended—

(1) in paragraph (7) by striking "and" at the end thereof;

(2) in paragraph (8) by striking the period at the end thereof and inserting "; and"; and

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

"(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms.".

SEC. 1240. FIREARMS AND EXPLOSIVES CONSPIRACY.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(k) Whoever conspires to commit any offense defined in this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(l) Whoever conspires to commit any offense defined in this chapter shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. 1241. THEFT OF FIREARMS OR EXPLOSIVES FROM LICENSEE.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(l) Whoever steals any firearm from a licensed importer, licensed manufacturer, licensed dealer or licensed collector shall be fined in accordance with the title, imprisoned not more than ten years, or both.".

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(m) Whoever steals any explosive material from a licensed importer, licensed manufacturer or licensed dealer, or from any permittee shall be fined in accordance with this title, imprisoned not more than ten years, or both.".

SEC. 1242. DISPOSING OF EXPLOSIVE TO PROHIBITED PERSONS.

Section 842(d) of title 18, United State Code, is amended by striking "licensee" and inserting in lieu thereof "person".

SEC. 1243. CLARIFICATION OF "BURGLARY" UNDER THE ARMED CAREER CRIMINAL STATUTE.

Section 924(e)(2) of title 18, United States Code, is amended by adding at the end thereof the following:

"(D) the term 'burglary' means any crime punishable by a term of imprisonment exceeding one year and consisting of entering or remaining surreptitiously within a building that is the property of another with intent to engage in conduct constituting a Federal or State offense.".

SEC. 1244. CLARIFICATION OF PENALTY ENHANCEMENT.

Section 924(c)(1)(D) of title 18, United States Code, is amended by striking "convicted of a violation of" and inserting "Sentenced pursuant to".

SEC. 1245. BAR ON SALE OF FIREARMS AND EXPLOSIVE TO OR POSSESSION OF FIREARMS AND EXPLOSIVES BY PERSONS CONVICTED OF A VIOLENT OR SERIOUS DRUG MISDEMEANOR.

(a) FIREARMS.—Sections 842(d)(2) and 922(d)(1) of title 18, United States Code, are each amended by inserting ", or has been convicted in any court of any crime of violence involving use of a firearm or destructive device or misdemeanor drug or narcotic offense (as defined in section 404(c) of the Controlled Substances Act, 21 U.S.C. 844(c)) for which the maximum penalty authorized is greater than 6 months (it is a bar to a prosecution under this paragraph that the conviction for a misdemeanor drug or narcotic offense occurred prior to the date of enactment of the Violent Crime Control Act of 1991)" after "crime punishable by imprisonment for a term exceeding one year";

(b) EXPLOSIVES.—Sections 842(i)(1) and 922(g)(1) of title 18, United States Code, are each amended by inserting "or has been convicted in any court of any crime of violence involving use of a firearm or destructive device or misdemeanor drug or narcotic offense (as defined in section 404(c) of the Controlled Substances Act, 21 U.S.C. 844(c)) for which the maximum penalty authorized is greater than 6 months (it is a bar to a prosecution under this section that the conviction for a serious misdemeanor drug or narcotic offense occurred prior to the date of enactment of the Violent Crime Control Act of 1991)" after "crime punishable by imprisonment for a term exceeding one year";

Subtitle C—Prohibited Gun Clips and Magazines

SEC. 1251. FINDINGS.

The Congress finds that—

(1) offenses involving firearms equipped with magazines, belts, drums, feed strips, and other similar devices that enable such firearms to fire more than fifteen rounds without reloading, and particularly drug offenses, with their attendant loss of life and the generation of illegal profits, affect interstate and foreign commerce; and

(2) such devices are themselves sold in interstate and foreign commerce, and are moved in commerce for the purpose of use in violent crimes.

SEC. 1252. CERTAIN AMMUNITION CLIPS AND MAGAZINES DEFINED AS FIREARMS.

Section 921(a)(3) of title 18, United States Code, is amended by striking "or" before "(D)", and by striking out the period after the word "device" and inserting in lieu thereof "; or (E) any ammunition feeding device.".

SEC. 1253. DEFINITION OF AMMUNITION FEEDING DEVICE.

Section 921(a) of title 18, United States Code, is amended by adding a new paragraph at the end thereof as follows:

"(30) The term 'ammunition feeding device' means a detachable magazine, belt, drum, feed strip, or similar device which has a capacity of, or which can be readily restored or converted to accept more than 15 rounds of ammunition. The term also includes any combination of parts from which such device can be assembled. Notwithstanding the foregoing, such term shall not include any attached tubular device designed to accept and capable of operating with only .22 rim-fire caliber ammunition.".

SEC. 1254. PROHIBITIONS APPLICABLE TO AMMUNITION FEEDING DEVICES.

Section 922 of title 18, United States Code, is amended by adding new subsections (v), (w), and (x), as follows:

"(v) It shall be unlawful for any person to import, manufacturer, transport, ship, transfer, receive, or possess an ammunition feeding device, except that this subsection shall not apply to—

"(1) any importation or manufacture of such a device for sale or distribution by a licensed importer or licensed manufacturer to the United States or any department, agency, or political subdivision thereof;

"(2) any possession, shipment, transportation of or transfer (in accordance with the provisions of subsections (w) and (x)) of such

a device that was lawfully possessed before this subsection takes effect; or

"(3) any manufacture of such a device for the purpose of exportation.

"(w) The Secretary shall maintain a central registry of all ammunition feeding devices transferred after the effective date of this subsection which, after such transfer, are not in the possession or under the control of the United States, or any department or agency thereof or any department, agency, or political subdivision thereof. This registry shall be known as the National Ammunition Feeding Device Registry. The registry shall include—

"(1) identification of the device;

"(2) date of registration;

"(3) identification and address of the person entitled to possess the device; and

"(4) such other information as may be required by regulations promulgated by the Secretary.

"(x) Each transferor of an ammunition feeding device that was lawfully possessed before the effective date of subsection (v) shall (except in the case of a transfer to the United States, or any department or agency thereof or any State or any department, agency, or political subdivision thereof) register the device to the transferee in accordance with regulations promulgated by the Secretary. Any information or evidence required to be provided in the course of such registration by a natural person shall be subject to the use-restriction provisions of section 5848 of title 26, United States Code. The transferor shall, contemporaneously with the registration of the device, pay a fee of $25 to the Secretary. A transferee of an ammunition feeding device required to be registered as required by this subsection shall retain proof of such registration which shall be made available to the Secretary upon request.".

SEC. 1255. IDENTIFICATION MARKINGS FOR AMMUNITION FEEDING DEVICES.

Section 923(i) of title 18, United States Code, is amended by adding at the end thereof a new sentence as follows: "An ammunition feeding device shall be identified by a serial number and such other identification as the Secretary may by regulations prescribe.".

SEC. 1256. CRIMINAL PENALTIES.

Subsection 924(a)(2) of title 18, United States Code, is amended by striking out "or (o)" and inserting in lieu there of "(o), or (v)".

SEC. 1257. NONINTERRUPTION OF BUSINESS FOR PERSONS IN THE BUSINESS OF IMPORTING OR MANUFACTURING AMMUNITION FEEDING DEVICES.

Any person engaging in the business of manufacturing or importing ammunition feeding devices requiring a license under the provisions of chapter 44 of title 18, United States Code, who was engaged in such business on the date of enactment of this Act, and who files an application for a license under the provisions of section 923 of title 18, United States Code, within 30 days after the date of enactment, may continue such business pending final action on the application. All provisions of chapter 44 of title 18, United States Code, shall apply to such applicant in the same manner and to the same extent as if the applicant were a holder of a license under chapter 44.

RIEGLE AMENDMENT NO. 468

(Ordered to lie on the table.)

Mr. RIEGLE submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place in the bill, insert the following:

SEC. . REGIONAL VIOLENT CRIME ASSISTANCE.

The Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.) is amended—

(1) by amending section 511 to read as follows:

"ALLOCATION OF FUNDS FOR GRANTS

"(a) SPECIAL DISCRETIONARY FUNDS.—Of the total amount appropriated for this part (other than chapter B of this subpart) in any fiscal year—

"(1) if that amount is $250,000,000 or less, 20 percent shall be reserved and set aside for ths section in a special discretionary fund for use by the Director in carrying out the purpsoes specified in section 503;

"(2) if that amount is greater than $250,000,000 but less than $500,000,000—

"(A) $50,000,000 shall be reserved and set aside for this section in the special discretionary fund described in paragraph (1); and

"(B) 20 percent of the excess over $250,000,000 shall be reserved and set aside for this section in a special discretionary fund for use by the Director in carrying out the purposes specified in section 513; and

"(3) if that amount is greater than $500,000,000—

"(A) $50,000,000 shall be reserved and set aside for this section in the special discretionary fund described in paragraph (1); and

"(B) $50,000,000 shall be reserved and set aside for this section in the special discretionary fund described in paragraph (2)(B).

"(b) AMOUNT OF GRANTS.—Grants under this section may be made for amounts up to 75 percent of the costs of the programs or projects contained in the approved application.";

(2) in section 512 by inserting "for purposes specified in section 503" after "section 511"; and

(3) by inserting after section 521 the following new section:

"REGIONAL VIOLENT CRIME ASSISTANCE

"(a) PURPOSES OF GRANTS.—The Director may make a grant to a State for the purposes of—

"(1) enhancing law enforcement and criminal justice systems in regions that suffer from high rates of violent crime or face particular violent crime problems that warrent Federal assistance; and

"(2) developing and implementing multijurisdictional strategies to respond to and prevent violent crime.

"(b) AMOUNT.—(1) No grantee under subsection (a) shall receive a grant exceeding $10,000,000.

(c) CONSIDERATIONS IN AWARDING GRANTS.—(1) In awarding grants under subsection (a), the Director shall give priority to—

"(A) states that develop and implement plans to assist law enforcement and criminal justice authorities from or near jurisdictions with high rates of violent crime; and

"(B) states that propose to develop a multijurisdictional or regional approach to respond to or prevent violent crime.

"(2) The Director shall not limit grants under subsection (a) to highly populated centers of violent crime, but shall give due consideration to applications from less populated regions where the magnitude and severity of violent crime warrants Federal assistance.

"(3) The Director shall not limit grants under subsection (a) to the enhancement of law enforcement capabilities, but shall give due consideration to applications that propose to use funds for the improvement of the criminal justice system in general.".

METZENBAUM AMENDMENT NO. 469

(Ordered to lie on the table.)

Mr. METZENBAUM submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place in the bill, insert the following:

Paragraph (b) of section 3621 of title 18, United States Code, is amended by inserting after subsection (5) the following:

"However, the bureau may not consider the social or economic status of the prisoner in designating the place of the prisoner's imprisonment."

LEAHY AMENDMENT NO. 470

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place, insert the following:

SEC. . FEDERAL BUREAU OF INVESTIGATION ACCESS TO CERTAIN TELEPHONE SUBSCRIBER INFORMATION.

(a) REQUIRED CERTIFICATION.—Section 2709(b) of title 18, United States Code, is amended to read as follows:

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director in the Intelligence Division, may—

"(1) request the name, address, length of service, and toll billing records if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

"(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a postion not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

"(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

"(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.".

(b) REPORT TO JUDICIARY COMMITTEES.—Section 2709(e) of title 18, United States Code, is amended by adding after "Senate" the following: ", and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,".

BIDEN AMENDMENT NO. 471

(Ordered to lie on the table.)

Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

Add at the appropriate place in the bill:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Violence Against Women Act of 1991".

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—SAFE STREETS FOR WOMEN

Sec. 101. Short title.

Subtitle A—Federal Penalties for Sex Crimes

Sec. 111. Repeat offenders.
Sec. 112. Federal penalties.
Sec. 113. Mandatory restitution for sex crimes.

Subtitle B—Law Enforcement and Prosecution Grants to Reduce Violent Crimes Against Women

Sec. 121. Grants to combat violent crimes against women.

Subtitle C—Safety for Women in Public Transit and Public Parks

Sec. 131. Grants for capital improvements to prevent crime in public transportation.
Sec. 132. Grants for capital improvements to prevent crime in national parks.
Sec. 133. Grants for capital improvements to prevent crime in public parks.

Subtitle D—National Commission on Violent Crime Against Women

Sec. 141. Establishment.
Sec. 142. Duties of commission.
Sec. 143. Membership.
Sec. 144. Reports.
Sec. 145. Executive Director and staff.
Sec. 146. Powers of commission.
Sec. 147. Authorization of appropriations.
Sec. 148. Termination.

Subtitle E—New Evidentiary Rules

Sec. 151. Sexual history in all criminal cases.
Sec. 152. Sexual history in civil cases.
Sec. 153. Amendments to rape shield law.
Sec. 154. Evidence of clothing.

Subtitle F—Assistance to Victims of Sexual Assault

Sec. 161. Education and prevention grants to reduce sexual assaults against women.
Sec. 162. Rape exam payments.

TITLE II—SAFE HOMES FOR WOMEN

Sec. 201. Short title.

Subtitle A—Interstate Enforcement

Sec. 211. Interstate enforcement.

Subtitle B—Arrest in Spousal Abuse Cases

Sec. 221. Encouraging arrest policies.

Subtitle C—Funding for Shelters

Sec. 231. Authorization.

Subtitle D—Family Violence Prevention and Services Act Amendments

Sec. 241. Expansion of purpose.
Sec. 242. Expansion of State demonstration grant program.
Sec. 243. Grants for public information campaigns.
Sec. 244. State commissions on domestic violence.
Sec. 245. Indian tribes.
Sec. 246. Funding limitations.
Sec. 247. Grants to entities other than States; local share.
Sec. 248. Shelter and related assistance.
Sec. 249. Law enforcement training and technical assistance grants.
Sec. 250. Report on recordkeeping.
Sec. 251. Model State leadership incentive grants for domestic violence intervention.
Sec. 252. Funding for technical assistance centers.

Subtitle E—Youth Education and Domestic Violence

Sec. 261. Educating youth about domestic violence.

Subtitle F—Confidentiality for Abused Persons

Sec. 271. Confidentiality for abused persons.

TITLE III—CIVIL RIGHTS

Sec. 301. Civil rights.

TITLE IV—SAFE CAMPUSES FOR WOMEN

Sec. 401. Short title.
Sec. 402. Findings.
Sec. 403. Grants for campus rape education.
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TITLE V—EQUAL JUSTICE FOR WOMEN IN THE COURTS ACT OF 1990

Sec. 501. Short title.

Subtitle A—Education and Training for Judges and Court Personnel in State Courts

Sec. 511. Grants authorized.
Sec. 512. Training provided by grants.
Sec. 513. Cooperation in developing programs in making grants under this title.
Sec. 514. Authorization of appropriations.

Subtitle B—Education and Training for Judges and Court Personnel in Federal Courts

Sec. 521. Education and training grants.
Sec. 522. Cooperation in developing programs.
Sec. 523. Authorization of appropriations.

TITLE I—SAFE STREETS FOR WOMEN

SEC. 101. SHORT TITLE.

This title may be cited as the "Safe Streets for Women Act of 1991".

Subtitle A—Federal Penalties for Sex Crimes

SEC. 111. REPEAT OFFENDERS.

(a) IN GENERAL.—Chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 2247. Repeat offenders

"Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to provide that any person who commits a violation of this chapter, after one or more prior convictions for an offense punishable under this chapter, or after one or more prior convictions under the laws of any State or foreign country relating to aggravated sexual abuse, sexual abuse, or abusive sexual contact, is punishable by a term of imprisonment up to twice that otherwise provided in the guidelines, or up to twice the fine authorized in the guidelines, or both.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following:

"2247. Repeat offenders.".

SEC. 112. FEDERAL PENALTIES.

(a) RAPE AND AGGRAVATED RAPE.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to provide that a defendant convicted of aggravated rape under section 2241 of title 18, United States Code, or rape under section 2242 of title 18, United States Code, shall be assigned a base offense level under chapter 2 of the sentencing guidelines that is at least 4 levels greater than the base offense level applicable to such offenses under the guidelines in effect on November 1, 1990, or otherwise shall amend the guidelines applicable to such offenses so as to achieve a comparable minimum guideline sentence. In amending such guidelines, the Sentencing Commission shall review the appropriateness of existing specific offense characteristics or other adjustments applicable to such offenses, and make such changes as it deems appropriate, taking into account the severity of rape offenses, with or without aggravating factors; the unique nature and duration of the mental injuries inflicted on the victims of such offenses; and any other relevant factors.

(b) EFFECT OF AMENDMENT.—If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instructions set forth in subsection (a) so as to achieve a comparable result.

(b) STATUTORY RAPE.—

(1) Section 2243(a) of title 18, United States Code, is amended by striking "5 years" and inserting "10 years".

(2) Section 2243(b) of title 18, United States Code, is amended by striking "one year," and inserting "two years,".

(3) Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to incorporate the increase in maximum penalties provided by this section for sections 2243(a) and 2243(b) of title 18, United States Code.

SEC. 113. MANDATORY RESTITUTION FOR SEX CRIMES.

(a) IN GENERAL.—Chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 2248. Mandatory restitution

"(a) IN GENERAL.—Notwithstanding the terms of section 3663 of this title, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

"(b) SCOPE AND NATURE OF ORDER.—(1) The order of restitution under this section shall direct that—

"(A) the defendant pay to the victim the full amount of the victim's losses as determined by the court, pursuant to paragraph (3); and

"(B) the United States Attorney enforce the restitution order by all available and reasonable means.

"(2) For purposes of this subsection, the term 'full amount of the victim's losses' includes any costs incurred by the victim for—

"(A) medical services relating to physical, psychiatric, or psychological care;

"(B) physical and occupational therapy or rehabilitation;

"(C) lost income;

"(D) attorneys' fees; and

"(E) any other losses suffered by the victim as a proximate result of the offense.

"(3) Restitution orders under this section are mandatory. A court may not decline to issue an order under this section because of—

"(A) the economic circumstances of the defendant; or

"(B) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

"(4)(A) Notwithstanding the terms of paragraph (3), the court may take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution is to be paid.

"(B) For purposes of this paragraph, the term 'economic circumstances' includes—

"(i) the financial resources and other assets of the defendant;

"(ii) projected earnings, earning capacity, and other income of the defendant; and

"(iii) any financial obligations of the defendant, including obligations to dependents.

"(C) An order under this section may direct the defendant to make a single lump-sum payment or partial payments at specified intervals. The order shall also provide that the defendant's restitutionary obligation takes priority over any criminal fine ordered.

"(D) In the event that the victim has recovered for any amount of loss through the proceeds of insurance or any other source, the order of restitution shall provide that restitution be paid to the person who provided the compensation, but that restitution shall be paid to the victim before any restitution is paid to any other provider of compensation.

"(5) Any amount paid to a victim under this section shall be set off against any amount later recovered as compensatory damages by the victim from the defendant in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(c) PROOF OF CLAIM.—(1) Within 60 days after conviction and, in any event, no later than 10 days prior to sentencing, the United States Attorney (or his delegee), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or his delegee) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or his delegee) shall advise the victim that the victim may file a separate affidavit.

"(2) If no objection is raised by the defendant, the amounts attested to in the affidavit filed pursuant to subsection (1) shall be entered in the court's restitution order. If objection is raised, the court may require the victim or the United States Attorney (or his delegee) to submit further affidavits or other supporting documents, demonstrating the victim's losses.

"(3) If the court concludes, after reviewing the supporting documentation and considering the defendant's objections, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. Any records filed, or testimony heard, pursuant to this section, shall be in camera in the judge's chambers. Notwithstanding any other provision of law, this section does not entitle the defendant to discovery of the contents of, or matters related to, any supporting documentation, including medical, psychological, or psychiatric records.

"(4) In the event that the victim's losses are not ascertainable 10 days prior to sentencing as provided in subsection (c)(1), the United States Attorney (or his delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

"(d) DEFINITIONS.—For purposes of this section, the term 'victim' includes any person who has suffered direct physical, emotional, or pecuniary harm as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court: *Provided*, That in no event shall the defendant be named as such representative or guardian.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following:

"2248. Mandatory restitution.".

Subtitle B—Law Enforcement and Prosecution Grants to Reduce Violent Crimes Against Women

SEC. 121. GRANTS TO COMBAT VIOLENT CRIMES AGAINST WOMEN.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by—

(1) redesignating part N as part O;

(2) redesignating section 1401 as section 1501; and

(3) adding after part M the following:

"PART N—GRANTS TO COMBAT VIOLENT CRIMES AGAINST WOMEN

"SEC. 1401. PURPOSE OF THE PROGRAM AND GRANTS.

"(a) GENERAL PROGRAM PURPOSE.—The purpose of this part is to assist States, Indian tribes, cities, and other localities to develop effective law enforcement and prosecution strategies to combat violent crimes against women and, in particular, to focus efforts on those areas with the highest rates of violent crime against women.

"(b) PURPOSES FOR WHICH GRANTS MAY BE USED.—Grants under this part shall provide additional personnel, training, technical assistance, data collection and other equipment for the more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women and specifically, for the purposes of—

"(1) training law enforcement officers and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of sexual assault and domestic violence;

"(2) developing, training, or expanding units of law enforcement officers and prosecutors specifically targeting violent crimes against women, including the crimes of sexual assault and domestic violence;

"(3) developing and implementing police and prosecution policies, protocols, or orders specifically devoted to identifying and responding to violent crimes against women, including the crimes of sexual assault and domestic violence;

"(4) developing, installing, or expanding data collection systems, including computerized systems, linking police, prosecutors, and courts or for the purpose of identifying and tracking arrests, prosecutions, and convictions for the crimes of sexual assault and domestic violence; and

"(5) developing, enlarging, or strengthening victim services programs, including sexual assault and domestic violence programs, to increase reporting and reduce attrition rates for cases involving violent crimes against women, including the crimes of sexual assault and domestic violence.

"(c) GRANTS FOR MULTIPLE USES.—Grants under this part must be used for at least 3 of the 5 purposes listed in subsection (b).

"Subpart 1—High Intensity Crime Area Grants

"SEC. 1411. HIGH INTENSITY GRANTS.

"(a) IN GENERAL.—The Director of the Bureau of Justice Assistance (hereafter in this part referred to as the 'Director') shall make grants to areas of 'high intensity crime' against women.

"(b) DEFINITION.—For purposes of this part, a 'high intensity crime area' means an area with one of the 40 highest rates of violent crime against women, as determined by the Bureau of Justice Statistics pursuant to section 1412.

"SEC. 1412. HIGH INTENSITY GRANT APPLICATION.

"(a) COMPUTATION.—Within 45 days after the date of enactment of this part, the Bureau of Justice Statistics shall compile a list of the 40 areas with the highest rates of violent crime against women based on the combined female victimization rate per population for assault, sexual assault (including, but not limited to, rape), murder, robbery, and kidnapping.

"(b) USE OF DATA.—In calculating the combined female victimization rate required by subsection (a), the Bureau of Justice Statistics may rely on—

"(1) existing data collected by States, municipalities, Indian reservations or statistical metropolitan areas showing the number of police reports of the crimes listed in subsection (a); and

"(2) existing data collected by the Federal Bureau of Investigation, including data from those governmental entities already complying with the National Incident Based Reporting System, showing the number of police reports of crimes listed in subsection (a).

"(c) PUBLICATION.—After compiling the list set forth in subsection (a), the Bureau of Justice Statistics shall convey it to the Director who shall publish it in the Federal Register.

"(d) QUALIFICATION.—Upon satisfying the terms of subsection (e), any high intensity crime area shall be qualified for a grant under this subpart upon application by the chief executive officer of the governmental entities responsible for law enforcement and prosecution of criminal offenses within the area and certification that—

"(1) the funds shall be used to reduce the rate of violent crimes against women and for at least 3 of the purposes outlined in section 1401(b);

"(2) grantees and subgrantees shall develop a plan for implementation, and otherwise consult and coordinate program grants, with nongovernmental nonprofit victim services programs; and

"(3) at least 25 percent of the amount granted shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

"(e) APPLICATION REQUIREMENTS.—The application requirements provided in section 513 of this title shall apply to grants made

under this subpart. In addition, each application must provide the certifications required by subsection (d) including documentation from nonprofit nongovernmental victim services programs showing their participation in developing the plan required by subsection (d)(2). Applications shall—

"(1) include documentation from the prosecution, law enforcement, and victim services programs to be assisted showing—

"(A) need for the grant funds;

"(B) intended use of the grant funds; and

"(C) expected results from the use of grant funds; and

"(2) proof of compliance with the requirements for the payment of forensic medical exams provided in section 162 of this title.

"(f) DISBURSEMENT.—

"(1) No later than 60 days after the receipt of an application under this subpart, the Director shall either disburse the appropriate sums provided for under this subpart or shall inform the applicant why the application does not conform to the terms of section 513 of this title or to the requirements of this section.

"(2) In disbursing monies under this subpart, the Director shall ensure, to the extent practicable, that grantees—

"(A) equitably distribute funds on a geographic basis;

"(B) determine the amount of subgrants based on the population to be served; and

"(C) give priority to areas with the greatest showing of need.

"(g) GRANTEE REPORTING.—Upon completion of the grant period under this subpart, the grantee shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this part. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

"Subpart 2—Other Grants to States to Combat Violent Crimes Against Women

"SEC. 1421. GENERAL GRANTS TO STATES.

"(a) GENERAL GRANTS.—The Director is authorized to make grants to States, for use by States, units of local government in the States, and nonprofit nongovernmental victim services programs in the States, for the purposes outlined in section 1401(b), and to reduce the rate of violent crimes against women.

"(b) AMOUNTS.—From amounts appropriated, the amount of grants under subsection (a) shall be—

"(1) $500,000 to each State; and

"(2) that portion of the then remaining available money to each State that results from a distribution among the States on the basis of each State's population in relation to the population of all States.

"(c) QUALIFICATION.—Upon satisfying the terms of subsection (d), any State shall be qualified for funds provided under this part upon certification that—

"(1) the funds shall be used to reduce the rate of violent crimes against women and for at least 3 of the purposes outlined in section 1401(b);

"(2) grantees and subgrantees shall develop a plan for implementation, and otherwise consult and coordinate, with nonprofit nongovernmental victim services programs, including sexual assault and domestic violence victim services programs;

"(3) at least 25 percent of the amount granted shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

"(d) APPLICATION REQUIREMENTS.—The application requirements provided in section 513 of this title shall apply to grants made under this subpart. In addition, each application shall include the certifications of qualification required by subsection (c) including documentation from nonprofit nongovernmental victim services programs showing their participation in developing the plan required by subsection (c)(2). Applications shall—

"(1) include documentation from the prosecution, law enforcement, and victim services programs to be assisted showing—

"(A) need for the grant funds;

"(B) intended use of the grant funds; and

"(C) expected results from the use of grant funds; and

"(2) proof of compliance with the requirements for the payment of forensic medical exams provided in section 162 of this title.

"(e) DISBURSEMENT.—(1) No later than 60 days after the receipt of an application under this subpart, the Director shall either disburse the appropriate sums provided for under this subpart or shall inform the applicant why the application does not conform to the terms of section 513 of this title or to the requirements of this section.

"(2) In disbursing monies under this subpart, the Director shall issue regulations to ensure that States will—

"(A) equitably distribute monies on a geographic basis including nonurban and rural areas, and giving priority to localities with populations under 200,000;

"(B) determine the amount of subgrants based on the population to be served; and

"(C) give priority to areas with the greatest showing of need.

"(f) GRANTEE REPORTING.—Upon completion of the grant period under this subpart, the State grantee shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this subpart. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

"SEC. 1422. GENERAL GRANTS TO TRIBES.

"(a) GENERAL GRANTS.—The Director is authorized to make grants to Indian tribes, for use by tribes, tribal organizations or nonprofit nongovernmental victim services programs on Indian reservations, for the purposes outlined in section 1401(b), and to reduce the rate of violent crimes against women in Indian country.

"(b) AMOUNTS.—From amounts appropriated, the amount of grants under subsection (a) shall be awarded on a competitive basis to tribes, with minimum grants of $35,000 and maximum grants of $300,000.

"(c) QUALIFICATION.—Upon satisfying the terms of subsection (d), any tribe shall be qualified for funds provided under this part upon certification that—

"(1) the funds shall be used to reduce the rate of violent crimes against women and for at least 3 of the purposes outlined in section 1401(b); and

"(2) at least 25 percent of the grant funds shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

"(d) APPLICATION REQUIREMENTS.—(1) Applications shall be made directly to the Director and shall contain a description of the tribes' law enforcement responsibilities for the Indian country described in the application and a description of the tribes' system of courts, including whether the tribal government operates courts of Indian offenses as defined in 25 U.S.C. 1301 or CFR courts under 25 CFR 11 et seq.

"(2) Applications shall be in such form as the Director may prescribe and shall specify the nature of the program proposed by the applicant tribe, the data and information on which the program is based, and the extent to which the program plans to use or incorporate existing services available in the Indian country where the grant will be used.

"(3) The term of any grant shall be for a minimum of 3 years.

"(e) GRANTEE REPORTING.—At the end of the first 12 months of the grant period and at the end of each year thereafter, the Indian tribal granted shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this subpart. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

"(f) DEFINITIONS.—(1) The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

"(2) The term 'Indian country' has the meaning given to such term by section 1151 of title 18, United States Code.

"Subpart 3—General Terms and Conditions

"SEC. 1431. GENERAL DEFINITIONS.

"As used in this part—

"(1) the term 'victim services program' means any public or private nonprofit program that assists victims, including (A) nongovernmental nonprofit organizations such as rape crisis centers or battered women's shelters, including nonprofit nongovernmental organizations assisting victims through the legal process and (B) victim/witness programs within governmental entities;

"(2) the term 'sexual assault' includes not only assaults committed by offenders who are strangers to the victim but also assaults committed by offenders who are known or related by blood or marriage to the victim; and

"(3) the term 'domestic violence' includes felony and misdemeanor offenses committed by a current or former spouse of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse, or any other person similarly situated to a spouse who is protected under the domestic or family violence laws of the jurisdiction receiving grant monies.

"SEC. 1432. GENERAL TERMS AND CONDITIONS.

"(a) NONMONETARY ASSISTANCE.—In addition to the assistance provided under subparts 1 or 2, the Director may direct any Federal agency, with or without reimbursement, to use its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts.

"(b) BUREAU REPORTING.—No later than 180 days after the end of each fiscal year for which grants are made under this part, the Director shall submit to the Judiciary Committees of the House and the Senate a report that includes, for each high intensity crime area (as provided in subpart 1) and for each State and for each grantee Indian tribe (as provided in subpart 2)—

"(1) the amount of grants made under this part;

"(2) a summary of the purposes for which those grants were provided and an evaluation of their progress; and

"(3) a copy of each grantee report filed pursuant to sections 1412(g) and 1421(f).

"(c) REGULATIONS.—No later than 45 days after the date of enactment of this part, the Director shall publish proposed regulations implementing this part. No later than 120 days after such date, the Director shall publish final regulations implementing this part.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year 1992, 1993, and 1994, $100,000,000 to carry out the purposes of subpart 1, and $190,000,000 to carry out the purposes of subpart 2, and $10,000,000 to carry out the purposes of section 1422 of subpart 2.".

Subtitle C—Safety for Women in Public Transit and Public Parks

SEC. 131. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT CRIME IN PUBLIC TRANSPORTATION.

Section 24 of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"GRANTS TO PREVENT CRIME IN PUBLIC TRANSPORTATION

"SEC. 24. (a) GENERAL PURPOSE.—From funds authorized under section 21, and not to exceed $10,000,000, the Secretary shall make capital grants for the prevention of crime and to increase security in existing and future public transportation systems. None of the provisions of this Act may be construed to prohibit the financing of projects under this section where law enforcement responsibilities are vested in a local public body other than the grant applicant.

"(b) GRANTS FOR LIGHTING, CAMERA SURVEILLANCE, AND SECURITY PHONES.—

"(1) From the sums authorized for expenditure under this section for crime prevention, the Secretary is authorized to make grants and loans to States and local public bodies or agencies for the purpose of increasing the safety of public transportation by—

"(A) increasing lighting within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

"(B) increasing camera surveillance of areas within and adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

"(C) providing emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages; or

"(D) any other project intended to increase the security and safety of existing or planned public transportation systems.

"(2) From the sums authorized under this section, at least 75 percent shall be expended on projects of the type described in subsection (b)(1) (A) and (B).

"(c) REPORTING.—All grants under this section are contingent upon the filing of a report with the Secretary and the Department of Justice, Office of Victims of Crime, showing crime rates in or adjacent to public transportation before, and for a 1-year period after, the capital improvement. Statistics shall be broken down by type of crime, sex, race, and relationship of victim to the offender.

"(d) INCREASED FEDERAL SHARE.—Notwithstanding any other provision of this Act, the Federal share under this section for each capital improvement project which enhances the safety and security of public transportation systems and which is not required by law (including any other provision of this chapter) shall be 90 percent of the net project cost of such project.

"(e) SPECIAL GRANTS FOR PROJECTS TO STUDY INCREASING SECURITY FOR WOMEN.—From the sums authorized under this section, the Secretary shall provide grants and loans for the purpose of studying ways to reduce violent crimes against women in public transit through better design or operation of public transit systems.

"(f) GENERAL REQUIREMENTS.—All grants or loans provided under this section shall be subject to all the terms, conditions, requirements, and provisions applicable to grants and loans made under section 2(a).".

SEC. 132. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT CRIME IN NATIONAL PARKS.

The Act of August 18, 1970, the National Park System Improvements in Administration Act (90 Stat. 1931; 16 U.S.C. 1a-1 et seq.) is amended by adding at the end thereof the following:

"SEC. 13. NATIONAL PARK SYSTEM CRIME PREVENTION ASSISTANCE.

"(a) From the sums authorized pursuant to section 7 of the Land and Water Conservation Act of 1965, and not to exceed $10,000,000, the Secretary of the Interior is authorized to provide Federal assistance to reduce the incidence of violent crime in the National Park System.

"(b) The Secretary shall direct the chief official responsible for law enforcement within the National Park Services to—

"(1) compile a list of areas within the National Park System with the highest rates of violent crime;

"(2) make recommendations concerning capital improvements, and other measures, needed within the National Park System to reduce the rates of violent crime, including the rate of sexual assault; and

"(3) publish the information required by paragraphs (1) and (2) in the Federal Register.

"(c) No later than 120 days after the date of enactment of this section, and based on the recommendations and list issued pursuant to subsection (b), the Secretary shall distribute funds throughout the National Park Service. Priority shall be given to those areas with the highest rates of sexual assault.

"(d) Funds provided under this section may be used for the following purposes—

"(1) to increase lighting within or adjacent to public parks and recreation areas;

"(2) to provide emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public parks and recreation areas;

"(3) to increase security or law enforcement personnel within or adjacent to public parks and recreation areas; and

"(4) any other project intended to increase the security and safety of public parks and recreation areas.".

SEC. 133. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT CRIME IN PUBLIC PARKS.

Section 6 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-8) is amended by adding at the end thereof the following new subsection:

"(h) CAPITAL IMPROVEMENT AND OTHER PROJECTS TO REDUCE CRIME.—In addition to assistance for planning projects, and in addition to the projects identified in subsection (e), and from amounts appropriated, the Secretary shall provide financial assistance to the States, not to exceed $15,000,000 in total, for the following types of projects or combinations thereof:

"(1) For the purpose of making capital improvements and other measures to increase safety in urban parks and recreation areas, including funds to—

"(A) increase lighting within or adjacent to public parks and recreation areas;

"(B) provide emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public parks and recreation areas;

"(C) increase security personnel within or adjacent to public parks and recreation areas; and

"(D) any other project intended to increase the security and safety of public parks and recreation areas.

"(2) In addition to the requirements for project approval imposed by this section, eligibility for assistance under this subsection is dependent upon a showing of need. In providing funds under this subsection, the Secretary shall give priority to those projects proposed for urban parks and recreation areas with the highest rates of crime and, in particular, to urban parks and recreation areas with the highest rates of sexual assault.

"(3) Notwithstanding the terms of subsection (c), the Secretary is authorized to provide 70 percent improvement grants for projects undertaken by any State for the purposes outlined in this subsection. The remaining share of the cost shall be borne by the State.".

Subtitle D—National Commission on Violent Crime Against Women

SEC. 141. ESTABLISHMENT.

There is established a commission to be known as the National Commission on Violent Crime Against Women (hereinafter referred to as "the Commission").

SEC. 142. DUTIES OF COMMISSION.

(a) GENERAL PURPOSE OF THE COMMISSION.—The Commission shall carry out activities for the purposes of promoting a national policy on violent crime against women, and for making recommendations for how to reduce violent crime against women.

(b) FUNCTIONS.—The Commission shall perform the following functions—

(1) evaluate the adequacy of, and make recommendations regarding, current law enforcement efforts at the Federal and State levels to reduce the rate of violent crimes against women;

(2) evaluate the adequacy of, and make recommendations regarding, the responsiveness of State prosecutors and State courts to violent crimes against women;

(3) evaluate the adequacy of, and make recommendations regarding, the adequacy of current education, prevention, and protection services for women victims of violent crime;

(4) evaluate the adequacy of, and make recommendations regarding, the role of the Federal Government in reducing violent crimes against women;

(5) evaluate the adequacy of, and make recommendations regarding, national public awareness and the public dissemination of information essential to the prevention of violent crimes against women;

(6) evaluate the adequacy of, and make recommendations regarding, data collection and government statistics on the incidence and prevalence of violent crimes against women;

(7) evaluate the adequacy of, and make recommendations regarding, the adequacy of State and Federal laws on sexual assault and the need for a more uniform statutory response to sex offenses; and

(8) evaluate the adequacy of, and make recommendations regarding, the adequacy of State and Federal laws on domestic violence and the need for a more uniform statutory response to domestic violence.

SEC. 143. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—

(1) APPOINTMENT.—The Commission shall be composed of 15 members as follows:

(A) Five members shall be appointed by the President—

(i) three of whom shall be—

(I) the Attorney General;

(II) the Secretary of Health and Human Services; and

(III) the Director of the Federal Bureau of Investigation,

who shall be nonvoting members, except that in the case of a tie vote by the Commission, the Attorney General shall be a voting member;

(ii) two of whom shall be selected from the general public on the basis of such individuals being specially qualified to serve on the Commission by reason of their education, training, or experience; and

(iii) at least one of whom shall be selected for their experience in providing services to women victims of violent crime.

(B) Five members shall be appointed by the Speaker of the House of Representatives on the joint recommendation of the Majority and Minority Leaders of the House of Representatives.

(C) Five members shall be appointed by the President pro tempore of the Senate on the joint recommendation of the Majority and Minority Leaders of the Senate.

(2) CONGRESSIONAL COMMITTEE RECOMMENDATIONS.—In making appointments under subparagraphs (B) and (C) of paragraph (1), the Majority and Minority Leaders of the House of Representatives and the Senate shall duly consider the recommendations of the Chairmen and Ranking Minority Members of committees with jurisdiction over laws contained in title 18 of the United States Code.

(3) REQUIREMENTS OF APPOINTMENTS.—The Majority and Minority Leaders of the Senate and the House of Representatives shall—

(A) select individuals who are specially qualified to serve on the Commission by reason of their education, training, and experience, including experience in advocacy or service organizations specializing in sexual assault and domestic violence; and

(B) engage in consultations for the purpose of ensuring that the expertise of the ten members appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate shall provide as much of a balance as possible and, to the greatest extent possible, cover the fields of law enforcement, prosecution, judicial administration, legal expertise, victim compensation boards, and victim advocacy.

(4) TERM OF MEMBERS.—Members of the Commission (other than members appointed under paragraph (1)(A)(i)) shall serve for the life of the Commission.

(5) VACANCY.—A vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(b) CHAIRMAN.—Not later than 15 days after the members of the Commission are appointed, such members shall select a Chairman from among the members of the Commission.

(c) QUORUM.—Seven members of the Commission shall constitute a quorum, but a lesser number may be authorized by the Commission to conduct hearings.

(d) MEETINGS.—The Commission shall hold its first meeting on a date specified by the Chairman, but such date shall not be later than 60 days after the date of the enactment of this Act. After the initial meeting, the Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least six times.

(e) PAY.—Members of the Commission who are officers or employees or elected officials of a government entity shall receive no additional compensation by reason of their service on the Commission.

(f) PER DIEM.—While away from their homes or regular places of business in the performance of duties for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

(g) DEADLINE FOR APPOINTMENT.—Not later than 45 days after the date of the enactment of this Act, the members of the Commission shall be appointed.

SEC. 144. REPORTS.

(a) IN GENERAL.—Not later than 1 year after the date on which the Commission is fully constituted under section 143, the Commission shall prepare and submit a final report to the President and to congressional committees that have jurisdiction over legislation addressing violent crimes against women, including the crimes of domestic and sexual assault.

(b) CONTENTS.—The final report submitted under paragraph (1) shall contain a detailed statement of the activities of the Commission and of the findings and conclusions of the Commission, including such recommendations for legislation and administrative action as the Commission considers appropriate.

SEC. 145. EXECUTIVE DIRECTOR AND STAFF.

(a) EXECUTIVE DIRECTOR.—

(1) APPOINTMENT.—The Commission shall have an Executive Director who shall be appointed by the Chairman, with the approval of the Commission, not later than 30 days after the Chairman is selected.

(2) COMPENSATION.—The Executive Director shall be compensated at a rate not to exceed the maximum rate of the basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

(b) STAFF.—With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission.

(c) APPLICABILITY OF CIVIL SERVICE LAWS.—The Executive Director and the additional personnel of the Commission appointed under subsection (b) may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Executive Director may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed $200 per day.

SEC. 146. POWERS OF COMMISSION.

(a) HEARINGS.—For the purpose of carrying out this subtitle, the Commission may conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths before the Commission.

(b) DELEGATION.—Any member or employee of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take under this subtitle.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any executive department or agency such information as may be necessary to enable the Commission to carry out this subtitle, except to the extent that the department or agency is expressly prohibited by law from furnishing such information. On the request of the Chairman of the Commission, the head of such a department or agency shall furnish nonprohibited information to the Commission.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

SEC. 147. AUTHORIZATIONS OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1992, $500,000 to carry out the purposes of this subtitle.

SEC. 148. TERMINATION.

The Commission shall cease to exist 30 days after the date on which its final report is submitted under section 144. The President may extend the life of the Commission for a period of not to exceed one year.

Subtitle E—New Evidentiary Rules

SEC. 151. SEXUAL HISTORY IN ALL CRIMINAL CASES.

The Federal Rules of Evidence are amended by inserting after rule 412 the following:

"Rule 412A. Evidence of victim's past behavior in other criminal cases

"(a) REPUTATION AND OPINION EVIDENCE EXCLUDED.—Nothwithstanding any other provision of law, in a criminal case, other than a sex offense case governed by rule 412, reputation or opinion evidence of the past sexual behavior of an alleged victim is not admissible.

"(b) ADMISSIBILITY.—Notwithstanding any other provision of law, in a criminal case, other than a sex offense case governed by rule 412, evidence of an alleged victim's past sexual behavior (other than reputation and opinion evidence) may be admissible if—

"(1) the evidence is admitted in accordance with the procedures specified in subdivision (c); and

"(2) the probative value of the evidence outweighs the danger of unfair prejudice.

"(c) PROCEDURES.—(1) If the defendant intends to offer evidence of specific instances of the alleged victim's past sexual behavior, the defendant shall make a written motion to offer such evidence not later than 15 days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

"(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If necessary, the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the alleged victim and offer relevant evidence.

Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the defendant seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

"(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence that the defendant seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice such evidence shall be admissible in the trial to the extent an order made by the court specifies the evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined. In its order, the court should consider (A) the chain of reasoning leading to its finding of relevance, and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences.".

SEC. 152. SEXUAL HISTORY IN CIVIL CASES.

The Federal Rules of Evidence, as amended by section 151 of this Act, are amended by adding after rule 412A the following:

"Rule 412B. Evidence of past sexual behavior in civil cases

"(a) REPUTATION AND OPINION EVIDENCE EXCLUDED.—Notwithstanding any other provision of law, in a civil case in which a defendant is accused of actionable sexual misconduct, as defined in subdivision (d), reputation or opinion evidence of the plaintiff's past sexual behavior is not admissible.

"(b) ADMISSIBLE EVIDENCE.—Notwithstanding any other provision of law, in a civil case in which a defendant is accused of actionable sexual misconduct, as defined in subdivision (d), evidence of a plaintiff's past sexual behavior other than reputation or opinion evidence may be admissible if—

"(1) admitted in accordance with the procedures specified in subdivision (c); and

"(2) the probative value of such evidence outweighs the danger of unfair prejudice.

"(c) PROCEDURES.—(1) If the defendant intends to offer evidence of specific instances of the plaintiff's past sexual behavior, the defendant shall make a written motion to offer such evidence not later than 15 days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the plaintiff.

"(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If necessary, the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the plaintiff and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the defendant seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

"(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence that the defendant seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the plaintiff may be examined or cross-examined. In its order, the court should consider (A) the chain of reasoning leading to its finding of relevance, and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences.

"(d) DEFINITIONS.—For purposes of this rule, a case involving a claim of actionable sexual misconduct, includes, but is not limited to, sex harassment or discrimination claims brought pursuant to title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000(e)) and gender bias claims brought pursuant to title III of the Violence Against Women Act of 1991.".

SEC. 153. AMENDMENTS TO RAPE SHIELD LAW.

Rule 412 of the Federal Rules of Evidence is amended—

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

"(e) INTERLOCUTORY APPEAL.—Notwithstanding any other provision of law, any evidentiary rulings made pursuant to this rule are subject to interlocutory appeal by the government or by the alleged victim.

"(f) RULE OF RELEVANCE AND PRIVILEGE.—If the prosecution seeks to offer evidence of prior sexual history, the provisions of this rule may be waived by the alleged victim."; and

(2) by adding at the end of subdivision (c)(3) the following: "In its order, the court should consider (A) the chain of reasoning leading to its finding of relevance; and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences.".

SEC. 154. EVIDENCE OF CLOTHING.

The Federal Rules of Evidence are amended by adding after rule 412 the following:

"Rule 413. Evidence of victim's clothing as inciting violence

"Notwithstanding any other provision of law, in a criminal case in which a person is accused of an offense under chapter 109A of title 18, United States Code, evidence of an alleged victim's clothing is not admissible to show that the alleged victim incited or invited the offense charged.".

Subtitle F—Assistance to Victims of Sexual Assault

SEC. 161. EDUCATION AND PREVENTION GRANTS TO REDUCE SEXUAL ASSAULTS AGAINST WOMEN.

Part A of title XIX of the Public Health and Health Services Act (42 U.S.C. 300w et seq.) is amended as follows:

(1) by adding at the end thereof the following new section:

"§ 1910A. Use of allotments for rape prevention education

"(a) Notwithstanding the terms of section 1904(a)(1) of this title, amounts transferred by the State for use under this part may be used for rape prevention and education programs conducted by rape crisis centers or similar nongovernmental nonprofit entities, which programs may include—

"(1) educational seminars;

"(2) the operation of hotlines;

"(3) training programs for professionals;

"(4) the preparation of informational materials; and

"(5) other efforts to increase awareness of the facts about, or to help prevent, sexual assault.

"(b) States providing grant monies must assure that at least 15 percent of the monies are devoted to education programs targeted for junior high school and high school students.

"(c) There are authorized to be appropriated under this section for each fiscal year 1992, 1993, and 1994, $65,000,000 to carry out the purposes of this section.

"(d) Funds authorized under this section may only be used for providing rape prevention and education programs.

"(e) For purposes of this section, the term 'rape prevention and education' includes education and prevention efforts directed at offenses committed by offenders who are not known to the victim as well as offenders who are known to the victim.

"(f) States shall be allotted funds under this section pursuant to the terms of sections 1902 and 1903, and subject to the conditions provided in this section and sections 1904 through 1909.";

(2) striking section 1901(b); and

(3) striking section 1904(a)(1)(G).

SEC. 162. RAPE EXAM PAYMENTS.

"No State or other grantee is entitled to funds under title I of the Violence Against Women Act of 1990 unless the State or other grantee incurs the full cost of forensic medical exams for victims of sexual assault. A State or other grantee does not incur the full medical cost of forensic medical exams if it chooses to reimburse the victim after the fact unless the reimbursement program waives any minimum loss or deductible requirement, provides victim reimbursement within a reasonable time (90 days), permits applications for reimbursement within one year from the date of the exam, and provides information to all subjects of forensic medical exams about how to obtain reimbursement.

TITLE II—SAFE HOMES FOR WOMEN

SEC. 201. SHORT TITLE.

This title may be cited as the "Safe Homes for Women Act of 1990".

Subtitle A—Interstate Enforcement

SEC. 211. INTERSTATE ENFORCEMENT.

(a) IN GENERAL.—Part 1 of title 18, United States Code, is amended by inserting after chapter 110 the following:

"Chapter 110A—Violence Against Spouses

"Sec. 2261. Traveling to commit spousal abuse.
"Sec. 2262. Interstate violation of protection orders.
"Sec. 2263. Restitution.
"Sec. 2264. Full faith and credit given to protection orders.
"Sec. 2265. Definitions for chapter.

"§ 2261. Traveling to commit spousal abuse

"(a) IN GENERAL.—Any person who travels or causes another (including the intended victim) to travel across State lines or in interstate commerce with the intent to injure a spouse or intimate partner and who, during the course of any such travel or thereafter, does an act that injures his or her spouse or intimate partner in violation of a criminal law of the State where the injury occurs, shall be fined not more than $1,000 or imprisoned for not more than 5 years but not less than 3 months, or both, in addition to any fine or term of imprisonment provided under State law.

"(b) NO STATE LAW.—If no fine or term of imprisonment is provided for under the law of the State where the injury occurs, a person violating this section shall be punished as follows:

"(1) If permanent disfigurement or life-threatening bodily injury results, by imprisonment for not more than 20 years; where serious bodily injury results, by fine under this title or imprisonment for not more than 10 years, or both; where bodily injury results, by fine under this title or imprisonment for not more than 5 years, or both.

"(2) If the offense is committed with intent to commit another felony, by fine under this title or imprisonment for not more than 10 years, or both.

"(3) If the offense is committed with a dangerous weapon, with intent to do bodily harm, by fine under this title or imprisonment for not more than 5 years, or both.

"(4) If the offense constitutes sexual abuse, as that conduct is described under chapter 109A of title 18, United States Code (without regard to whether the offense was committed in the maritime, territorial or prison jurisdiction of the United States) by fine or term of imprisonment as provided for the applicable conduct under chapter 109A.

"(c) CRIMINAL INTENT.—The criminal intent of the offender required to establish an offense under subsection (b) is the general intent to do the acts that result in injury to a spouse or intimate partner and not the specific intent to violate the law of a State.

"§ 2262. Interstate violation of protection orders

"(a) IN GENERAL.—Any person against whom a valid protection order has been entered or any agent of that person who travels or causes another (including the intended victim) to travel across State lines or in interstate commerce with the intent to injure a spouse or intimate partner and who, during the course of such travel or thereafter, commits an act that injures his or her spouse or intimate partner in violation of a valid protection order issued by a State, with the intent to injure his or her spouse or intimate partner, shall be punished as follows:

"(1) If permanent disfigurement or life-threatening bodily injury results, by imprisonment for not more than 20 years; where serious bodily injury results, by fine under this title or imprisonment for not more than 10 years, or both; where bodily injury results, by fine under this title or imprisonment for not more than 5 years, or both.

"(2) If the offense is committed with intent to commit another felony, by fine under this title or imprisonment for not more than 10 years, or both.

"(3) If the offense is committed with a dangerous weapon, with intent to do bodily harm, by fine under this title or imprisonment for not more than 5 years, or both.

"(4) If the offender has previously violated any prior protection order issued against that person for the protection of the same victim, by fine under this title or imprisonment for not more than 5 years and not less than six months, or both.

"(5) If the offense constitutes sexual abuse, as that conduct is described under chapter 109A of title 18, United States Code (without regard to whether the conduct was committed in the special maritime, territorial or prison jurisdiction of the United States) by fine or term of imprisonment as provided for the applicable offense under chapter 109A.

"(b) CRIMINAL INTENT.—The criminal intent required to establish the offense provided in subsection (a) is the general intent to do the acts which result in injury to a spouse or intimate partner and not the specific intent to violate a protection order or State law.

"§ 2263. Interim protections

"In furtherance of the purposes of this chapter, and to protect against abuse of a spouse or intimate partner, any judge or magistrate before whom a criminal case under this chapter is brought, shall have the power to issue temporary orders of protection for the protection of an abused spouse or intimate partner pending final adjudication of the case, upon a showing of a likelihood of danger to the abused spouse or intimate partner.

"§ 2264. Restitution

"(a) IN GENERAL.—In addition to any fine or term of imprisonment provided under this chapter, and notwithstanding the terms of section 3663 of this title, the court shall order restitution to the victim of an offense under this chapter.

"(b) SCOPE AND NATURE OF ORDER.—(1) The order of restitution under this section shall direct that—

"(A) the defendant pay to the victim the full amount of the victim's losses as determined by the court, pursuant to subsection (3); and

"(B) the United States Attorney enforce the restitution order by all available and reasonable means.

"(2) For purposes of this subsection, the term 'full amount of the victim's losses' includes any costs incurred by the victim for—

"(A) medical services relating to physical, psychiatric, or psychological care;

"(B) physical and occupational therapy or rehabilitation; and

"(C) lost income;

"(D) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

"(E) any other losses suffered by the victim as a proximate result of the offense.

"(3) Restitution orders under this section are mandatory. A court may not decline to issue an order under this section because of—

"(A) the economic circumstances of the defendant; or

"(B) the fact that victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance.

"(4)(A) Notwithstanding the terms of paragraph (3), the court may take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution is to be paid, including—

"(i) the financial resources and other assets of the defendant;

"(ii) projected earnings, earning capacity, and other income of the defendant; and

"(iii) any financial obligations of the offender, including obligations to dependents.

"(B) An order under this section may direct the defendant to make a single lump-sum payment, or partial payments at specified intervals. The order shall provide that the defendant's restitutionary obligation takes priority over any criminal fine ordered.

"(C) In the event that the victim has recovered for any amount of loss through the proceeds of insurance or any other source, the order of restitution shall provide that restitution be paid to the person who provided the compensation, but that restitution shall be paid to the victim before any restitution is paid to any other provider of compensation.

"(5) Any amount paid to a victim under this section shall be set off against any amount later recovered as compensatory damages by the victim from the defendant in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(c) PROOF OF CLAIM.—(1) Within 60 days after conviction and, in any event, no later than 10 days prior to sentencing, the United States Attorney (or his delegee), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or his delegee) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or his delegee) shall advise the victim that the victim may file a separate affidavit.

"(2) If no objection is raised by the defendant, the amounts attested to in the affidavit filed pursuant to subsection (1) shall be entered in the court's restitution order. If objection is raised, the court may require the victim or the United States Attorney (or his delegee) to submit further affidavits or other supporting documents, demonstrating the victim's losses.

"(3) If the court concludes, after reviewing the supporting documentation and considering the defendant's objections, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. Any records filed, or testimony heard, pursuant to this section, shall be in camera in the judge's chambers. Notwithstanding any other provision of law, this section does not entitle the defendant to discovery of the contents of, or related to, any supporting documentation, including medical, psychological, or psychiatric records.

"(4) In the event that the victim's losses are not ascertainable 10 days prior to sentencing as provided in subsection (c)(1), the United States Attorney (or his delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

"(d) RESTITUTION AND CRIMINAL PENALTIES.—An award of restitution to the victim of an offense under this chapter shall not be a substitute for imposition of punishment under sections 2261 and 2262.

"(e) DEFINITIONS.—For purposes of this section, the term 'victim' includes any person who has suffered direct physical, emotional, or pecuniary harm as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court: *Provided*, That in no event shall the defendant be named as such representative or guardian.

"§ 2265. Full faith and credit given to protection orders

"(a) FULL FAITH AND CREDIT.—Any protection order issued consistent with the terms of subsection (b) by the court of one State (the issuing State) shall be accorded full faith and credit by the court of another

State (the enforcing State) and enforced as if it were the order of the enforcing State.

"(b) PROTECTION ORDER.—A protection order issued by a State court is consistent with the provisions of this section if—

"(1) such court has jurisdiction over the parties and matter under the law of such State; and

"(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

"(c) CROSS OR COUNTER PETITION.—A protection order issued by a State court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—

"(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

"(2) if a cross or counter petition has been filed, if the court did not make specific findings that each party was entitled to such an order.

"§ 2266. Definitions for chapter

"As used in this chapter—

"(1) the term 'spouse or intimate partner' includes—

"(A) a present or former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and

"(B) any other person similarly situated to a spouse, other than a child, who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides;

"(2) the term 'protection order' includes any injunction or other order issued for the purpose of preventing violent or threatening acts by one spouse against his or her spouse or intimate partner, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion of an abused spouse or intimate partner;

"(3) the term 'act that injures' includes any act, except those done in self-defense, that results in physical injury or sexual abuse; and

"(4) the term 'State' includes a State of the United States, the District of Columbia, and any Indian tribe, commonwealth, territory, or possession of the United States.".

(b) TABLE OF CHAPTERS.—The table of chapters for part 1 of title 18, United States Code, is amended by inserting after the item for chapter 110 the following:

"110A. Violence against spouses ..... 2261.".

Subtitle B—Arrest in Spousal Abuse Cases

SEC. 221. ENCOURAGING ARREST POLICIES.

The Family Violence Prevention and Services Act (42 U.S.C. 10400) is amended by adding after section 311 the following:

"SEC. 312. ENCOURAGING ARREST POLICIES.

"(a) PURPOSE.—To encourage States, Indian tribes and localities to treat spousal violence as a serious violation of criminal law, the Secretary is authorized to make grants to eligible States, Indian tribes, municipalities, or local government entities for the following purposes:

"(1) to implement pro-arrest programs and policies in police departments and to improve tracking of cases involving spousal abuse;

"(2) to centralize and coordinate police enforcement, prosecution, or judicial responsibility for, spousal abuse cases in one group or unit of police officers, prosecutors, or judges;

"(3) to educate judges in criminal and other courts about spousal abuse and to improve judicial handling of such cases.

"(b) ELIGIBILITY.—(1) Eligible grantees are those States, Indian tribes, municipalities or other local government entities that—

"(A) demonstrate, through arrest and conviction statistics, that their laws or policies have been effective in significantly increasing the number of arrests made of spouse abusers; and

"(B) certify that their laws or official policies—

"(i) mandate arrest of spouse abusers based on probable cause that violence has been committed or mandate arrest of spouses violating the terms of a valid and outstanding protection order; or

"(ii) permit warrantless misdemeanor arrests of spouse abusers and encourage the use of that authority; and

"(C) demonstrate that their laws and policies discourage 'dual' arrests of abused and abuser and the increase in arrest rates demonstrated pursuant to paragraph (1)(A) is not the result of increased dual arrests.

"(2) For purposes of this section, the term 'protection order' includes any injunction issued for the purpose of preventing violent or threatening acts of spouse abuse, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

"(3) For purposes of this section, the term 'spousal or spouse abuse' includes abuse of a current or former spouse, a person who shares a child in common with the abuser, and a person who cohabits with or has cohabited with the abuser as a spouse.

"(4) The eligibility requirements provided in this section shall take effect one year after the date of enactment of this section.

"(c) DELEGATION AND AUTHORIZATION.—The Secretary shall delegate to the Attorney General of the United States the Secretary's responsibilities for carrying out this section to the Attorney General. There are authorized to be appropriated not in excess of $25,000,000 for each fiscal year to be used for the purpose of making grants under this section.

"(d) APPLICATION.—An eligible grantee shall submit an application to the Secretary. Such application shall—

"(1) contain a certification by the chief executive officer of the State, Indian tribes, municipality, or local government entity that the conditions of subsection (b) are met;

"(2) describe the entity's plans to further the purposes listed in subsection (a);

"(3) identify the agency or office or groups of agencies or offices responsible for carrying out the program; and

"(4) identify the nonprofit nongovernmental victim services programs that will be consulted in developing, and implementing, the program.

"(e) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to a grantee that—

"(1) does not currently provide for centralized handling of cases involving spousal or family violence in any one of the areas listed in this subsection—police, prosecutors, and courts; and

"(2) demonstrates a commitment to strong enforcement of laws, and prosecution of cases, involving spousal or family violence.

"(f) REPORTING.—Each grantee receiving funds under this section shall submit a report to the Secretary evaluating the effectiveness of the plan described in subsection (d)(2) and containing such additional information as the Secretary may prescribe.

"(g) REGULATIONS.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section. No later than 120 days after such date, the Secretary shall publish final regulations implementing this section.".

Subtitle C—Funding for Shelters

SEC. 231. AUTHORIZATION.

Section 310 of the Family Violence Prevention and Services Act (42 U.S.C. 10409) is amended to read as follows:

"SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

"(a) There are authorized to be appropriated to carry out the provisions of this title, $85,000,000 for fiscal year 1992, $100,000,000, for fiscal year 1993, and $125,000,000 for fiscal year 1994.

"(b) Of the sums authorized to be appropriated under subsection (a) of this section for any fiscal year, not less than 85 percent shall be used by the Secretary for making grants under section 303.

"(c) Of the sums authorized to be appropriated under subsection (a) of this section for any fiscal year, not more than 5 percent shall be used by the Secretary for making grants under section 314.".

Subtitle D—Family Violence Prevention and Services Act Amendments

SEC. 241. EXPANSION OF PURPOSE.

Section 302(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10401(1)) is amended by striking "to prevent" and inserting "to increase public awareness about and prevent".

SEC. 242. EXPANSION OF STATE DEMONSTRATION GRANT PROGRAM.

Section 303(a)(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(a)(1)) is amended by striking "to prevent" and inserting "to increase public awareness about and prevent".

SEC. 243. GRANTS FOR PUBLIC INFORMATION CAMPAIGNS.

The Family Violence Prevention and Services Act is amended by adding at the end thereof the following new section:

"GRANTS FOR PUBLIC INFORMATION CAMPAIGNS

"SEC. 314. (a) The Secretary may make grants to public or private nonprofit entities to provide public information campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.

"(b) No grant, contract, or cooperative agreement shall be made or entered into under this section unless an application that meets the requirements of subsection (c) has been approved by the Secretary.

"(c) An application submitted under subsection (b) shall—

"(1) provide such agreements, assurances, and information, be in such form and be submitted in such manner as the Secretary shall prescribe through notice in the Federal Reg-

ister, including a description of how the proposed public information campaign will target the population at risk, including pregnant women;

"(2) include a complete description of the plan of the application for the development of a public information campaign;

"(3) identify the specific audiences that will be educated, including communities and groups with the highest prevalence of domestic violence;

"(4) identify the media to be used in the campaign and the geographic distribution of the campaign;

"(5) describe plans to test market a development plan with a relevant population group and in a relevant geographic area and give assurance that effectiveness criteria will be implemented prior to the completion of the final plan that will include an evaluation component to measure the overall effectiveness of the campaign;

"(6) describe the kind, amount, distribution, and timing of informational messages and such other information as the Secretary may require, with assurances that media organizations and other groups with which such messages are placed will not lower the current frequency of public service announcements; and

"(7) contain such other information as the Secretary may require.

"(d) A grant, contract, or agreement made or entered into under this section shall be used for the development of a public information campaign that may include public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other mode of conveying information that the Secretary determines to be appropriate.

"(e) The criteria for awarding grants shall ensure that an applicant—

"(1) will conduct activities that educate communities and groups at greatest risk;

"(2) has a record of high quality campaigns of a comparable type; and

"(3) has a record of high quality campaigns that educate the population groups identified as most at risk.".

SEC. 244. STATE COMMISSIONS ON DOMESTIC VIOLENCE.

Section 303(a)(2) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by redesignating subparagraph (G) as subparagraph (H); and

(3) by inserting after subparagraph (F) the following new subparagraph:

"(G) provides assurances that, not later than 1 year after receipt of funds, the State shall have established a Commission on Domestic Violence to examine issues including—

"(i) the use of mandatory arrest of accused offenders;

"(ii) the adoption of 'no-drop' or vertical prosecution policies;

"(iii) the use of mandatory requirements for presentencing investigations;

"(iv) the length of time taken to prosecute cases or reach plea agreements;

"(v) the use of plea agreements;

"(vi) the testifying by victims at post-conviction sentencing and release hearings;

"(vii) the consistency of sentencing practices;

"(viii) restitution of victims;

"(ix) the reporting practices of and significance to be accorded to prior convictions (both felonies and misdemeanors); and

"(x) such other matters as the Commission believes merit investigation.

In implementing this requirement, State grantees must certify to the Secretary that—

"(aa) no less than one-third of Commission members be victim advocates associated with nonprofit shelters; and

"(bb) no more than 2 percent of the grant monies awarded shall be used to support the required Commission.".

SEC. 245. INDIAN TRIBES.

Section 303(b)(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(b)(1)) is amended by striking "is authorized" and inserting "from sums appropriated shall make no less than 10 percent available for".

SEC. 246. FUNDING LIMITATIONS.

Section 303(c) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(c)) is amended by striking ", and" and all that follows through "fiscal years".

SEC. 247. GRANTS TO ENTITIES OTHER THAN STATES; LOCAL SHARE.

The first sentence of section 303(f) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(f)) is amended to read as follows: "No demonstration grant may be made under this section to an entity other than a State or Indian tribe unless the entity provides 50 percent of the funding of the program or project funded by the grant.".

SEC. 248. SHELTER AND RELATED ASSISTANCE.

Section 303(g) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(g)) is amended by—

(1) striking "not less than 60 percent" and inserting "not less than 75 percent"; and

(2) striking "immediate shelter and related assistance to victims of family violence and their dependents" and inserting "shelter and related assistance to victims of family violence and their dependents, including any, but not requiring all of the following—

"(1) food, shelter, medical services, and counseling with respect to family violence, including counseling by peers individually or in groups;

"(2) transportation, legal assistance, referrals, and technical assistance with respect to obtaining financial assistance under Federal and State programs;

"(3) comprehensive counseling about parenting, preventive health (including nutrition, exercise, and prevention of substance abuse), educational services, employment training, social skills (including communication skills), home management, and assertiveness training; and

"(4) day care services for children who are victims of family violence or the dependents of such victims.".

SEC. 249. LAW ENFORCEMENT TRAINING AND TECHNICAL ASSISTANCE GRANTS.

Section 311(b) of the Family Violence Protection and Services Act (42 U.S.C. 10410(b)) is amended by adding at the end thereof the following new subparagraph:

"(d) Training grants may be made under this section only to private nonprofit organizations that have experience in providing training and technical assistance to law enforcement personnel on a national or regional basis.".

SEC. 250. REPORT ON RECORDKEEPING.

Not later than 120 days after the date of enactment of this Act, the Government Accounting Office shall complete a study of, and shall submit to Congress a report and recommendations on, problems of recordkeeping of criminal complaints involving domestic violence. The study and report shall examine efforts to date of the FBI and Justice Department to collect statistics on domestic violence and the feasibility of, including a suggested timetable for, requiring that the relationship between an offender and victim be reported in Federal and State records of crimes of assault, aggravated assault, rape, and other violent crimes.

SEC. 251. MODEL STATE LEADERSHIP INCENTIVE GRANTS FOR DOMESTIC VIOLENCE INTERVENTION.

The Family Violence Prevention Services Act, as amended by section 103 of this Act, is amended by adding at the end thereof the following new section:

"MODEL STATE LEADERSHIP GRANTS FOR DOMESTIC VIOLENCE INTERVENTION

"SEC. 315. (a) The Secretary, in cooperation with the Attorney General, shall award grants to not less than 10 States to assist in becoming model demonstration States and in meeting the costs of improving State leadership concerning activities that will—

"(1) increase the number of prosecutions for domestic violence crimes;

"(2) encourage the reporting of incidences of domestic violence; and

"(3) facilitate 'arrests and aggressive' prosecution policies.

"(b) To be designated as a model State under subsection (a), a State shall have in effect—

"(1) a law that requires mandatory arrest of a person that police have probable cause to believe has committed an act of domestic violence or probable cause to believe has violated an outstanding civil protection order;

"(2) a law or policy that discourages 'dual' arrests;

"(3) statewide prosecution policies that—

"(A) authorize and encourage prosecutors to pursue cases where a criminal case can be proved, including proceeding without the active involvement of the victim if necessary; and

"(B) implement model projects that include either—

"(i) a 'no-drop' prosecution policy; or

"(ii) a vertical prosecution policy; and

"(C) limit diversion to extraordinary cases, and then only after an admission before a judicial officer has been entered;

"(4) statewide guidelines for judges that—

"(A) reduce the automatic issuance of mutual restraining or protective orders in cases where only one spouse has sought a restraining or protective order;

"(B) discourage custody or joint custody orders by spouse abusers; and

"(C) encourage the understanding of domestic violence as a serious criminal offense and not a trivial dispute;

"(5) develop and disseminate methods to improve the criminal justice system's response to domestic violence to make existing remedies as easily available as possible to victims of domestic violence, including reducing delay, eliminating court fees, and providing easily understandable court forms.

"(c)(1) In addition to the funds authorized to be appropriated under section 310, there are authorized to be appropriated to make grants under this section $25,000,000 for fiscal year 1992 and such sums as may be necessary for each of the fiscal years 1993 and 1994.

"(2) Funds shall be distributed under this section so that no State shall receive more than $2,500,000 in each fiscal year under this section.

"(3) The Secretary shall delegate to the Attorney General the Secretary's responsibilities for carrying out this section and shall transfer to the Attorney General the funds appropriated under this section for the

purpose of making grants under this section.".

SEC. 252. FUNDING FOR TECHNICAL ASSISTANCE CENTERS.

The Family Violence Prevention and Services Act is amended by inserting after section 308 the following:

"SEC. 308A. TECHNICAL ASSISTANCE CENTERS.

"(a) PURPOSE.—The purpose of this section is to provide training and technical assistance to State, Indian tribal, and local domestic violence programs and to other professionals who provide services to victims of domestic violence. From the sums authorized under this title, the Secretary shall provide grants or contracts with public or private nonprofit organizations, for the establishment and maintenance of six national resource centers serving defined geographic areas. One national resource center shall offer resource, policy, and/or training assistance to Federal, State, Indian tribal, and local government agencies on issues pertaining to domestic violence and serve a coordinating and resource-sharing function among domestic violence service providers, and maintain a central resource library. The other national resource centers shall provide information, training and technical assistance to State, tribal and local domestic violence service providers. In addition, each national center shall specialize in one of the following areas of domestic violence service, prevention or law:

"(1) Public awareness and prevention education;

"(2) Criminal justice response to domestic violence, including court-mandated abuser treatment;

"(3) Child abuse and domestic violence, including domestic violence and child custody issues;

"(4) Domestic violence victim self-defense;

"(5) Medical personnel training; and

"(6) Enhancing victims' access to effective legal assistance.

"(b) ELIGIBILITY.—Eligible grantees are private non-profit organizations that—

"(1) focus primarily on domestic violence;

"(2) provide documentation to the Secretary demonstrating experience with issues of domestic violence, particularly in the specific area for which it is applying;

"(3) include on its advisory boards representatives from domestic violence programs in the region who are geographically and culturally diverse; and

"(4) demonstrate strong support from domestic violence advocates in the region for their designation as the regional resource center.

"(c) REPORTING.—Each grantee receiving funds under this section shall submit a report to the Secretary evaluating the effectiveness of the plan described and containing such additional information as the Secretary may prescribe.

"(d) REGULATIONS.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section.

"(e) FUNDING.—From the sums appropriated under section 310 of this title, not in excess of $2,000,000 for each fiscal year shall be used for the purpose of making grants under this section.".

Subtitle E—Youth Education and Domestic Violence

SEC. 261. EDUCATING YOUTH ABOUT DOMESTIC VIOLENCE.

(a) GENERAL PURPOSE.—For purposes of this section, the Secretary shall delegate his powers to the Secretary of Education, hereinafter referred to as the "Secretary". The Secretary shall develop model programs for education of young people about domestic violence and violence among intimate partners.

(b) NATURE OF PROGRAM.—The Secretary shall develop three separate programs for three different audiences: primary and middle schools, secondary schools, and institutions of higher education. These model programs shall be developed with the input of educational experts, law enforcement personnel, legal and psychological experts on battering, and victim advocate organizations such as battered women's shelters. The participation of each of these groups or individual consultants from such groups is essential to the development of a program that meets both the needs of educational institutions and the needs of the domestic violence problem.

(c) REVIEW AND DISSEMINATION.—Not later than 9 months after the date of enactment of this Act, the Secretary shall transmit the model programs, along with a plan and cost estimate for nationwide distribution, to the relevant committees of Congress for review.

(d) AUTHORIZATION.—There are authorized to be appropriated under this section for fiscal year 1992, $200,000 to carry out the purposes of this section.

Subtitle F—Confidentiality for Abused Persons

SEC. 271. CONFIDENTIALITY OF ABUSED PERSON'S ADDRESS.

No later than 90 days after the enactment of this Act, the Postmaster General shall promulgate regulations to secure the confidentiality of abused persons' addresses or otherwise prohibit the disclosure of an abused person's address consistent with the following guidelines:

(1) confidentiality shall be provided upon the presentation to an appropriate postal official of an existing and valid court order for the protection of an abused spouse;

(2) disclosure of addresses to State or Federal agencies for legitimate law enforcement or other governmental purposes shall not be prohibited; and

(3) compilations of addresses existing at the time the order is presented to an appropriate postal official shall be excluded from the scope of the proposed regulations.

TITLE III—CIVIL RIGHTS

SEC. 301. CIVIL RIGHTS.

(a) FINDINGS.—The Congress finds that—

(1) crimes motivated by the victim's gender constitute bias crimes in violation of the victim's right to be free from discrimination on the basis of gender;

(2) current law provides a civil rights remedy for gender crimes committed in the workplace, but not for gender crimes committed on the street or in the home; and

(3) State and Federal criminal laws do not adequately protect against the bias element of gender crimes, which separates these crimes from acts of random violence, nor do they adequately provide victims the opportunity to vindicate their interests.

(b) RIGHTS, PRIVILEGES AND IMMUNITIES.—All persons within the United States shall have the same rights, privileges and immunities in every State as is enjoyed by all other persons to be free from crimes of violence motivated by the victim's gender, as defined in subsection (d).

(c) CAUSE OF ACTION.—Any person, including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State, who deprives another of the rights, privileges or immunities secured by the Constitution and laws as enumerated in subsection (b) shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive or declaratory relief, or such other relief as the court may deem appropriate.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "crime of violence motivated by gender" means any crime of violence, as defined in this section, including rape, sexual assault, sexual abuse, abusive sexual contact, or any other crime of violence committed because of gender or on the basis of gender; and

(2) the term "crime of violence" means an act or series of acts that would come within the meaning of State or Federal offenses described in section 16 of title 18, United States Code, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States.

(e) LIMITATION AND PROCEDURES.—

(1) LIMITATION.—Nothing in this section entitles a person to a cause of action under subsection (c) for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by a preponderance of the evidence, to be "motivated by gender" as defined in subsection (d).

(2) NO PRIOR CRIMINAL ACTION.—Nothing in this section requires a prior criminal complaint, prosecution, or conviction to establish the necessary elements of a cause of action under subsection (c).

SEC. 302. CONFORMING AMENDMENT.

The Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. 1988) is amended—

(1) in the last sentence, by striking "or" after "Public Law 92-318,"; and

(2) by adding after "1964," the following: ", or title III of the Violence Against Women Act of 1991,".

TITLE IV—SAFE CAMPUSES FOR WOMEN

SEC. 401. SHORT TITLE.

This title may be cited as the "Safe Campuses for Women Act of 1990".

SEC. 402. FINDINGS.

The Congress finds that—

(1) rape prevention and education programs are essential to an educational environment free of fear for students' personal safety;

(2) sexual assault on campus, whether by fellow students or not, is widespread among the Nation's higher education institutions: experts estimate that 1 in 7 of the women now in college have been raped and over half of college rape victims know their attackers;

(3) sexual assault poses a grave threat to the physical and mental well-being of students and may significantly impair the learning process; and

(4) action by schools to educate students may make substantial inroads on the incidence of rape, including the incidence of acquaintance rape on campus.

SEC. 403. GRANTS FOR CAMPUS RAPE EDUCATION.

Title X of the Higher Education Act of 1965 is amended to add at the end thereof the following:

"PART D—GRANTS FOR CAMPUS RAPE EDUCATION."

SEC. 1071. GRANTS FOR CAMPUS RAPE EDUCATION.

"(a) IN GENERAL.—(1) The Secretary of Education is authorized to make grants to or enter into contracts with institutions of higher education for rape education and prevention programs under this section.

"(2) The Secretary shall make financial assistance available on a competitive basis

under this section. An institution of higher education or consortium of such institutions which desires to receive a grant or enter into a contract under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require in accordance with regulations.

"(3) The Secretary shall make every effort to ensure the equitable participation of private and public institutions of higher education and to ensure the equitable geographic participation of such institutions. In the award of grants and contracts under this section, the Secretary shall give priority to institutions who show the greatest need for the sums requested.

"(4) Not less than 50 percent of sums available for the purposes of this section shall be used to make grants under subsection (c) of this section.

"(b) GENERAL RAPE PREVENTION AND EDUCATION GRANTS.—Grants under this section shall be used to educate and provide support services to student victims of rape or sexual assault. Grants may be used for the following purposes:

"(1) to provide training for campus security and college personnel, including campus disciplinary or judicial boards, that address the issues of rape, sexual assault, and other gender-motivated crimes;

"(2) to develop, disseminate, or implement campus security and student disciplinary policies to prevent and discipline rape, sexual assault and other gender-motivated crimes;

"(3) to develop, enlarge or strengthen support services programs including medical or psychological counseling to assist victims' recovery from rape, sexual assault, or other gender-motivated crimes;

"(4) to create, disseminate, or otherwise provide assistance and information about victims' options on and off campus to bring disciplinary or other legal action; and

"(5) to implement, operate, or improve rape education and prevention programs, including programs making use of peer-to-peer education.

"(c) MODEL GRANTS.—Not less than 25 percent of the funds authorized under this section shall be available for grants for model demonstration programs to be coordinated with local rape crisis centers for the development and implementation of quality rape prevention and education curricula and for local programs to provide services to student rape victims.

"(d) ELIGIBILITY.—No institution of higher education or consortium of such institutions shall be eligible for a grant under this section unless—

"(1) its student code of conduct, or other written policy governing student behavior, explicitly prohibits not only rape but all forms of sexual assault; and

"(2) it has in effect and implements a written policy requiring the disclosure to the victim of any sexual assault the outcome of any investigation by campus police or campus disciplinary proceedings brought pursuant to the victim's complaint against the alleged perpetrator of the sexual assault: *Provided*, That nothing in this section shall be interpreted to authorize disclosure to any person other than the victim.

"(e) APPLICATIONS.—(1) In order to be eligible to receive a grant under this section for any fiscal year, an institution of higher education, or consortium of such institutions, shall submit an application to the Secretary at such time and in such manner as the Secretary shall prescribe.

"(2) Each such application shall—

"(A) set forth the activities and programs to be carried out with funds granted under this part;

"(B) contain an estimate of the cost for the establishment and operation of such programs;

"(C) explain how the program intends to address the issue of acquaintance rape;

"(D) provide assurances that the Federal funds made available under this section shall be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purpose described in this part, and in no case to supplant such funds; and

"(E) include such other information and assurances as the Secretary reasonably determines to be necessary.

"(e) GRANTEE REPORTING.—Upon completion of the grant period under this section, the grantee institution or consortium of institutions shall file a performance report with the Secretary explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this section. The Secretary shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

"(f) DEFINITIONS.—(1) Except as otherwise provided, the terms used in this part shall have the meaning provided under section 2981 of this title.

"(2) For purposes of this subchapter, the following terms have the following meanings:

"(A) The term 'rape education and prevention' includes programs that provide educational seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, the preparation of informational materials, and any other effort to increase campus awareness of the facts about, or to help prevent, sexual assault.

"(B) The term 'Secretary' means the Secretary of Education.

"(g) GENERAL TERMS AND CONDITIONS.—(1) REGULATIONS.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section. No later than 120 days after such date, the Secretary shall publish final regulations implementing this section.

"(2) No later than 180 days after the end of each fiscal year for which grants are made under this section, the Secretary shall submit to the committees of the House of Representatives and the Senate responsible for issues relating to higher education and to crime, a report that includes—

"(A) the amount of grants made under this section;

"(B) a summary of the purposes for which those grants were provided and an evaluation of their progress; and

"(C) a copy of each grantee report filed pursuant to subsection (e) of this section.

"(3) For the purpose of carrying out this subchapter, there are authorized to be appropriated $20,000,000 for the fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.".

SEC. 404. REQUIRED CAMPUS REPORTING OF SEXUAL ASSAULT.

Section 204(f) of the Crime Awareness and Campus Security Act of 1990 is amended to read as follows:

"(F) Statistics concerning the occurrence on campus, during the most recent school year, and during the 2 preceding school years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies—

"(i) murder;

"(ii) rape or sexual assault;

"(iii) robbery;

"(iv) aggravated assault;

"(v) burglary; and

"(vi) motor vehicle theft.

TITLE V—EQUAL JUSTICE FOR WOMEN IN THE COURTS ACT OF 1990

SECTION 501. SHORT TITLE.

This title may be cited as the "Equal Justice for Women in the Courts Act of 1991".

Subtitle A—Education and Training for Judges and Court Personnel in State Courts

SEC. 511. GRANTS AUTHORIZED.

The State Justice Institute is authorized to award grants for the purpose of developing, testing, presenting, and disseminating model programs to be used by States in training judges and court personnel in the laws of the States on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender.

SEC. 512. TRAINING PROVIDED BY GRANTS.

Training provided pursuant to grants made under this subtitle may include current information, existing studies, or current data on—

(1) the nature and incidence of rape and sexual assault by strangers and nonstrangers, marital rape, and incest;

(2) the underreporting of rape, sexual assault, and child sexual abuse;

(3) the physical, psychological, and economic impact of rape and sexual assault on the victim, the costs to society, and the implications for sentencing;

(4) the psychology of sex offenders, their high rate of recidivism, and the implications for sentencing;

(5) the historical evolution of laws and attitudes on rape and sexual assault;

(6) sex stereotyping of female and male victims of rape and sexual assault, racial stereotyping of rape victims and defendants, and the impact of such stereotypes on credibility of witnesses, sentencing, and other aspects of the administration of justice;

(7) application of rape shield laws and other limits on introduction of evidence that may subject victims to improper sex stereotyping and harassment in both rape and nonrape cases, including the need for sua sponte judicial intervention in inappropriate cross-examination;

(8) the use of expert witness testimony on rape trauma syndrome, child sexual abuse accommodation syndrome, post-traumatic stress syndrome, and similar issues;

(9) the legitimate reasons why victims of rape, sexual assault, and incest may refuse to testify against a defendant;

(10) the nature and incidence of domestic violence;

(11) the physical, psychological, and economic impact of domestic violence on the victim, the costs to society, and the implications for court procedures and sentencing;

(12) the psychology and self-presentation of batterers and victims and the implications for court proceedings and credibility of witnesses;

(13) sex stereotyping of female and male victims of domestic violence, myths about presence or absence of domestic violence in certain racial, ethnic, religious, or socioeconomic groups, and their impact on the administration of justice;

(14) historical evolution of laws and attitudes on domestic violence;

(15) proper and improper interpretations of the defenses of self-defense and provocation,

and the use of expert witness testimony on battered woman syndrome;

(16) the likelihood of retaliation, recidivism, and escalation of violence by batterers, and the potential impact of incarceration and other meaningful sanctions for acts of domestic violence including violations of orders of protection;

(17) economic, psychological, social and institutional reasons for victims' inability to leave the batterer, to report domestic violence or to follow through on complaints, including the influence of lack of support from police, judges, and court personnel, and the legitimate reasons why victims of domestic violence may refuse to testify against a defendant;

(18) the need for orders of protection, and the implications of mutual orders of protection, dual arrest policies, and mediation in domestic violence cases;

(19) recognition of and response to gender-motivated crimes of violence other than rape, sexual assault and domestic violence, such as mass or serial murder motivated by the gender of the victims; and

(20) current information on the impact of pornography on crimes against women, or data on other activities that tend to degrade women.

SEC. 513. COOPERATION IN DEVELOPING PROGRAMS IN MAKING GRANTS UNDER THIS TITLE.

The State Justice Institute shall ensure that model programs carried out pursuant to grants made under this subtitle are developed with the participation of law enforcement officials, public and private nonprofit victim advocates, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts.

SEC. 514. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1992, $600,000 to carry out the purposes of this subtitle. Of amounts appropriated under this section, the State Justice Institute shall expend no less than 40 percent on model programs regarding domestic violence and no less than 40 percent on model programs regarding rape and sexual assault.

Subtitle B—Education and Training for Judges and Court Personnel in Federal Courts

SEC. 521. EDUCATION AND TRAINING GRANTS.

(a) STUDY.—The Federal Judicial Center shall conduct a study of the nature and extent of gender bias in the Federal courts, including in proceedings involving rape, sexual assault, domestic violence, and other crimes of violence motivated by gender. The study shall be conducted by the use of data collection techniques such as reviews of trial and appellate opinions and transcripts, public hearings, and inquiries to attorneys practicing in the Federal courts. The Federal Judicial Center shall publicly issue a final report containing a detailed description of the findings and conclusions of the study, including such recommendations for legislative, administrative, and judicial action as it considers appropriate.

(b) MODEL PROGRAMS.—(1) The Federal Judicial Center shall develop, test, present, and disseminate model programs to be used in training Federal judges and court personnel in the laws on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender.

(2) The training programs developed under this subsection shall include—

(A) all of the topics listed in section 512 of subtitle A; and

(B) all procedural and substantive aspects of the legal rights and remedies for violent crime motivated by gender including such areas as the Federal penalties for sex crimes, interstate enforcement of laws against domestic violence and civil rights remedies for violent crimes motivated by gender.

SEC. 522. COOPERATION IN DEVELOPING PROGRAMS.

In implementing this subtitle, the Federal Judicial Center shall ensure that the study and model programs are developed with the participation of law enforcement officials, public and private nonprofit victim advocates, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts.

SEC. 523. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1992, $400,000 to carry out the purposes of this subtitle. Of amounts appropriated under this section, no less than 25 percent and no more than 40 percent shall be expended by the Federal Judicial Center on the study required by section 521(a) of this subtitle.

SPECTER AMENDMENT NO. 472

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place, inserts the following new Section:

SEC. . FUNDING FOR DEATH PENALTY PROSECUTIONS.

Part E of Title 1 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. §§3711 *et seq.*) is amended by adding the following new section:

SEC. 515. Notwithstanding any other provision of this subpart, the Director shall provide grants to the States, from the funding allocated pursuant to section 511, for the purpose of supporting litigation pertaining to federal habeas corpus petitions in capital cases. The total funding available for such grants within any fiscal year shall be equal to the funding provided to capital resource centers, pursuant to federal appropriation, in the same fiscal year."

METZENBAUM AMENDMENT NOS. 473 THROUGH 479

(Ordered to lie on the table.)

Mr. METZENBAUM submitted seven amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT NO. 473

At the end, insert the following:

SEC. 1. SHORT TITLE.

This Act may be cited as the "Brady Handgun Violence Prevention Act."

SEC. 2. WAITING PERIOD REQUIRED BEFORE PURCHASE OF HANDGUN.

(a) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(u)(1) It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (2);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within one day after the transferee furnishes the statement, provided a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 7 days have elapsed from the date the transferee furnished the statement, and the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10 day period ending on the date of the most recent proposal of such transfer by the transferee, which states that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit which—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(D) the law of the State—

"(i) prohibits any licensed importer, licensed manufacturer, or licensed dealer from transferring a handgun to an individual who is not licensed under section 923, before at least 7 days have elapsed from the date the transferee proposes such transfer; or

"(ii) requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verifies that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law; or

"(E) the transferor has received a report from any system of felon identification established by the Attorney General pursuant to section 6213(a) of the Anti-Drug Abuse Act of 1988, that available information does not indicate that possession or receipt of a handgun by the transferee would violate Federal, State, or local law.

"(2) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(3) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(4) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(5)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with paragraph (1)(A)(i)(III) with respect to the statement.

"(B) Unless the chief law enforcement officer to whom a copy of the statement is sent determines that a transaction would violate Federal, State, or local law, the officer shall, within 30 days after the date the transferee made such statement, destroy such copy and any record containing information derived from the statement.

"(6) For purposes of this subsection, the term, 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer, or the designee of any such individual.

"(7) This subsection shall not apply to the sale of a firearm in the circumstances described in subsection (c).

"(8) The Secretary shall take necessary actions to assure that the provisions of this subsection are published and disseminated to dealers and to the public.

"(9) A chief law enforcement officer shall not be liable to any person for action taken by the officer to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun under any Federal, State, or local law except a law that specifically provides for such liability.".

(b) HANDGUN DEFINED.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(31) The term 'handgun' means—

"(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

"(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.".

(c) PENALTY.—Section 924(a) of such title is amended—

(1) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922(u) shall be fined not more than $1,000, imprisoned for not more than one year, or both.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in 100 or more days after the date of the enactment of this Act.

SEC. 3. GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS AND TO DEFRAY THE COSTS OF BACKGROUND CHECKS.

(a) IN GENERAL.—The Attorney General shall, subject to appropriations, make a grant to an eligible State to be used—

(1) for the creation of a computerized criminal history record system or improvement of an existing system; and

(2) to defray the costs to state and local law enforcement agencies of conducting background checks of prospective handgun purchasers.

(b) ELIGIBLE STATES.—An eligible State under subsection (a) is one that—

(1) participates in, or makes arrangements to begin participating in by the end of 1993, the Interstate Identification Index operated by the Federal Bureau of Investigation;

(2) makes arrangements to achieve, by the end of 1995, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within 5 years prior to the date of enactment of this Act and thereafter; and

(3) in the case of a State other than a State described in section 922(u)(1)(D) of title 18, United States Code, establishes, by the end of 1993, procedures under which State and local law enforcement officers to whom statements are provided pursuant to section 922(c)(2) or 922(u)(1)(A)(i)(III) of title 18, United States Code, are required to make a reasonable effort to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun, using whatever Federal, State, and local record-keeping systems are readily available for this purpose.

(c) ALLOCATION.—Funds appropriated for grants under subsection (a) shall be allocated as follows:

(1) 50 percent of such funds shall be allocated among the States in accordance with their respective populations.

(2) 50 percent of such funds shall be allocated among the States at the discretion of the Attorney General.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (a) a total of $40,000,000 for fiscal year 1992 and all fiscal years thereafter.

AMENDMENT NO. 474

At the appropriate place, insert the following:

SEC. 1. SHORT TITLE.

This Act may be cited as the "Brady Handgun Violence Prevention Act."

SEC. 2. WAITING PERIOD REQUIRED BEFORE PURCHASE OF HANDGUN.

(a) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(u)(1) It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (2);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within one day after the transferee furnishes the statement, provided a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 7 days have elapsed from the date the transferee furnished the statement, and the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10 day period ending on the date of the most recent proposal of such transfer by the transferee, which states that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit which—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(D) the law of the State—

"(i) prohibits any licensed importer, licensed manufacturer, or licensed dealer from transferring a handgun to an individual who is not licensed under section 923, before at least 7 days have elapsed from the date the transferee proposes such transfer; or

"(ii) requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verifies that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law; or

"(E) the transferor has received a report from any system of felon identification established by the Attorney General pursuant to section 6213(a) of the Anti-Drug Abuse Act of 1988, that available information does not indicate that possession or receipt of a handgun by the transferee would violate Federal, State, or local law.

"(2) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for , and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and;

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(3) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(4) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(5)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with paragraph (1)(A)(i)(III) with respect to the statement.

"(B) Unless the chief law enforcement officer to whom a copy of the statement is sent determines that a transaction would violate Federal, State, or local law, the officer shall, within 30 days after the date the transferee made such statement, destroy such copy and any record containing information derived from the statement.

"(6) For purposes of this subsection, the term, 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer, or the designee of any such individual.

"(7) This subsection shall not apply to the sale of a firearm in the circumstances described in subsection (c).

"(8) The Secretary shall take necessary actions to assure that the provisions of this subsection are published and disseminated to dealers and to the public.

"(9) A chief law enforcement officer shall not be liable to any person for action taken by the officer to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun under any Federal, State, or local law except a law that specifically provides for such liability.".

(b) HANDGUN DEFINED.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(31) The term 'handgun' means—

"(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

"(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.".

(c) PENALTY.—Section 924(a) of such title is amended—

(1) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922(u) shall be fined not more than $1,000, imprisoned for not more than one year, or both.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in 95 or more days after the date of the enactment of this Act.

SEC. 3. GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS AND TO DEFRAY THE COSTS OF BACKGROUND CHECKS.

(a) IN GENERAL.—The Attorney General, shall, subject to appropriations, make a grant to an eligible State to be used—

(1) for the creation of a computerized criminal history record system or improvement of an existing system; and

(2) to defray the costs to state and local law enforcement agencies of conducting background checks of prospective handgun purchasers.

(b) ELIGIBLE STATES.—An eligible State under subsection (a) is one that—

(1) participates in, or makes arrangements to begin participating in by the end of 1993, the Interstate Identification Index operated by the Federal Bureau of Investigation;

(2) makes arrangements to achieve, by the end of 1995, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within 5 years prior to the date of enactment of this Act and thereafter; and

(3) in the case of a State other than a State described in section 922(u)(1)(D) of title 18, United States Code, establishes, by the end of 1993, procedures under which State and local law enforcement officers to whom statements are provided pursuant to section 922(c)(2) or 922(c)(1)(A)(i)(III) of title 18, United States Code, are required to make a reasonable effort to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun, using whatever Federal, State, and local recordkeeping systems are readily available for this purpose.

(c) ALLOCATION.—Funds appropriated for grants under subsection (a) shall be allocated as follows:

(1) 50 percent of such funds shall be allocated among the States in accordance with their respective populations.

(2) 50 percent of such funds shall be allocated among the States at the discretion of the Attorney General.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (a) a total of $40,000,000 for fiscal year 1992 and all fiscal years thereafter.

AMENDMENT NO. 475

Strike all after the first word proposed to be stricken and insert in lieu thereof the following:

SEC. 1. SHORT TITLE.

This Act may be cited as the "Brady Handgun Violence Prevention Act".

SEC. 2. WAITING PERIOD REQUIRED BEFORE PURCHASE OF HANDGUN.

(a) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(u)(1) It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (2);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within one day after the transferee furnishes the statement, provided a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 7 days have elapsed from the date the transferee furnished the statement, and the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10 day period ending on the date of the most recent proposal of such transfer by the transferee, which states that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit which—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(D) the law of the State—

"(i) prohibits any licensed importer, licensed manufacturer, or licensed dealer from transferring a handgun to an individual who is not licensed under section 923, before at least 7 days have elapsed from the date the transferee proposes such transfer; or

"(ii) requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verifies that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law; or

"(E) the transferor has received a report from any system of felon identification established by the Attorney General pursuant to section 6213(a) of the Anti-Drug Abuse Act of 1988, that available information does not indicate that possession or receipt of a handgun by the transferee would violate Federal, State, or local law.

"(2) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the trans-

feree and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for, and has not been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(3) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(4) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(5)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with paragraph (1)(A)(i)(III) with respect to the statement.

"(B) Unless the chief law enforcement officer to whom a copy of the statement is sent determines that a transaction would violate Federal, State, or local law, the officer shall, within 30 days after the date the transferee made such statement, destroy such copy and any record containing information derived from the statement.

"(6) For purposes of this subsection, the term, 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer, or the designee of any such individual.

"(7) This subsection shall not apply to the sale of a firearm in the circumstances described in subsection (c).

"(8) The Secretary shall take necessary actions to assure that the provisions of this subsection are published and disseminated to dealers and to the public.

"(9) A chief law enforcement officer shall not be liable to any person for action taken by the officer to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun under any Federal, State, or local law except a law that specifically provides for such liability.".

(b) HANDGUN DEFINED.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(31) The term 'handgun' means—

"(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

"(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.".

(c) PENALTY.—Section 924(a) of such title is amended—

(1) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922(u) shall be fined not more than $1,000, imprisoned for not more than one year, or both.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in 100 or more days after the date of the enactment of this Act.

SEC. 3. GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS AND TO DEFRAY THE COSTS OF BACKGROUND CHECKS.

(a) IN GENERAL.—The Attorney General shall, subject to appropriations, make a grant to an eligible State to be used—

(1) for the creation of a computerized criminal history record system or improvement of an existing system; and

(2) to defray the costs to state and local law enforcement agencies of conducting background checks of prospective handgun purchasers.

(b) ELIGIBLE STATES.—An eligible State under subsection (a) is one that—

(1) participates in, or makes arrangements to begin participating in by the end of 1993, the Interstate Identification Index operated by the Federal Bureau of Investigation;

(2) makes arrangements to achieve, by the end of 1995, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within 5 years prior to the date of enactment of this Act and thereafter; and

(3) in the case of a State other than a State described in section 922(u)(1)(D) of title 18, United States Code, establishes, by the end of 1993, procedures under which State and local law enforcement officers to whom statements are provided pursuant to section 922(c)(2) or 922(c)(1)(A)(i)(III) of title 18, United States Code, are required to make a reasonable effort to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun, using whatever Federal, State, and local recordkeeping systems are readily available for this purpose.

(c) ALLOCATION.—Funds appropriated for grants under subsection (a) shall be allocated as follows:

(1) 50 percent of such funds shall be allocated among the States in accordance with their respective populations.

(2) 50 percent of such funds shall be allocated among the States at the discretion of the Attorney General.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (a) a total of $40,000,000 for fiscal year 1992 and all fiscal years thereafter.

AMENDMENT NO. 476

Strike all after the first word proposed to be stricken and insert in lieu thereof the following:

SEC. 1. SHORT TITLE.

This Act may be cited as the "Brady Handgun Violence Prevention Act".

SEC. 2. WAITING PERIOD REQUIRED BEFORE PURCHASE OF HANDGUN.

(a) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(u)(1) It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (2);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within one day after the transferee furnishes the statement, provided a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) days have elapsed from the date the transferee furnished the statement, and the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law:

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10 day period ending on the date of the most recent proposal of such transfer by the transferee, which states that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit which—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued by only after an authorized government official has verified that the information availiable to such official does not indicate that possession of a handgun by the transferee would be in violation of law:

"(D) the law of the State—

"(i) prohibits any licensed importer, licensed manufacturer, or licensed dealer from transferring a handgun to an individual who is not licensed under section 923, before at least 7 days have elapsed from the date the transferee proposes such transfer; or

"(ii) requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verifies that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law; or

"(E) the transferor has received a report from any system of felon identification established by the Attorney General pursuant to section 6213(a) of the Anti-Drug Abuse Act of 1988, that available information does not indicate that possession or receipt of a handgun by the transferee would violate Federal, State, or local law.

"(2) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United states, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(3) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Fedferal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(4) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(5)(A) Any transferor who sells, delivers, or otherwise transfer a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with paragraph (1)(A)(i)(III) with respect to the statement.

"(B) Unless the chief law enforcement officer to whom a copy of the statement is sent determines that a transaction would violate Federal, State, or local law, the officer shall, within 30 days after the date the transferee made such statement, destroy such copy and any record containing information derived from the statement.

"(6) For purposes of this subsection, the term, 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer, or the designee of any such individual.

"(7) This subsection shall not apply to the sale of a firearm in the circumstances described in subsection (c).

"(8) The Secretary shall take necessary actions to assure that the provisions of this subsection are published and disseminated to dealers and to the public.

"(9) A chief law enforcement officer shall not be liable to any person for action taken by the officer to ascertain whether a transferee of the handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun under any Federal, State, or local law except a law that specifically provides for such liability.".

(b) HANDGUN DEFINED.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(31) The term 'handgun' means—

"(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

"(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.".

(c) PENALTY.—Section 924(a) of such title is amended—

(1) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922(u) shall be fined not more than $1,000, imprisoned for not more than one year, or both.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in 105 or more days after the date of the enactment of this Act.

SEC. 3. GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS AND TO DEFRAY THE COSTS OF BACKGROUND CHECKS.

(a) IN GENERAL.—The Attorney General shall, subject to appropriations, make a grant to an eligible State to be used—

(1) for the creation of a computerized criminal history record system or improvement of an existing system; and

(2) to defray the costs to State and local law enforcement agencies of conducting background checks of prospective handgun purchasers.

(b) ELIGIBLE STATES.—An eligible State under subsection (a) is one that—

(1) participates in, or makes arrangements to begin participating in by the end of 1993, the Interstate Identification Index operated by the Federal Bureau of Investigation;

(2) makes arrangements to achieve, by the end of 1995, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within 5 years prior to the date of enactment of this Act and thereafter; and

(3) in the case of a State other than a State described in section 922(u)(1)(D) of title 18, United States Code, establishes, by the end of 1993, procedures under which State and local law enforcement officers to whom statements are provided pursuant to section 922(c)(2) or 922(c)(1)(A)(i)(III) of title 18, United States Code, are required to make a reasonable effort to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun, using whatever Federal, State, and local recordkeeping system are readily available for this purpose.

(c) ALLOCATION.—Funds appropriated for grants under subsection (a) shall be allocated as follows:

(1) 50 percent of such funds shall be allocated among the States in accordance with their respective populations.

(2) 50 percent of such funds shall be allocated among the States at the discretion of the Attorney General.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (a) a total of $40,000,000 for fiscal year 1992 and all fiscal years thereafter.

AMENDMENT NO. 477

In lieu of the amendable matter, insert: "with instructions to report back forthwith with the following amendment:

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Brady Handgun Violence Prevention Act".

SEC. 2. WAITING PERIOD REQUIRED BEFORE PURCHASE OF HANDGUN.

(a) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(u)(1) It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (2);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within one day after the transferee furnishes the statement, provided a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 7 days have elapsed from the date the transferee furnished the statement, and the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10 day period ending on the date of the most recent proposal of such transfer by the transferee, which states that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit which—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(D) the law of the State—

"(i) prohibits any licensed importer, licensed manufacturer, or licensed dealer from transferring a handgun to an individual who is not licensed under section 923, before at least 7 days have elapsed from the date the transferee proposes such transfer; or

"(ii) requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verifies that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law; or

"(E) the transferor has received a report from any system of felon identification established by the Attorney General pursuant to section 6213(a) of the Anti-Drug Abuse Act

of 1988, that available information does not indicate that possession or receipt of a handgun by the transferee would violate Federal, State, or local law.

"(2) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(3) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(4) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(5)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with paragraph (1)(A)(i)(III) with respect to the statement.

"(B) Unless the chief law enforcement officer to whom a copy of the statement is sent determines that a transaction would violate Federal, State, or local law, the officer shall, within 30 days after the date the transferee made such statement, destroy such copy and any record containing information derived from the statement.

"(6) For purposes of this subsection, the term, 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer, or the designee of any such individual.

"(7) This subsection shall not apply to the sale of a firearm in the circumstances described in subsection (c).

"(8) The Secretary shall take necessary actions to assure that the provisions of this subsection are published and disseminated to dealers and to the public.

"(9) A chief law enforcement officer shall not be liable to any person for action taken by the officer to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun under any Federal, State, or local law except a law that specifically provides for such liability.".

(b) HANDGUN DEFINED.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(31) The term 'handgun' means—

"(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

"(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.".

(c) PENALTY.—Section 924(a) of such title is amended—

(1) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922(u) shall be fined not more than $1,000, imprisoned for not more than one year, or both.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in 120 or more days after the date of the enactment of this Act.

SEC. 3. GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS AND TO DEFRAY THE COSTS OF BACKGROUND CHECKS.

(a) IN GENERAL.—The Attorney General shall, subject to appropriations, make a grant to an eligible State to be used—

(1) for the creation of a computerized criminal history record system or improvement of an existing system; and

(2) to defray the costs to state and local law enforcement agencies of conducting background checks of prospective handgun purchasers.

(b) ELIGIBLE STATES.—An eligible State under subsection (a) is one that—

(1) participates in, or makes arrangements to begin participating in by the end of 1993, the Interstate Identification Index operated by the Federal Bureau of Investigation;

(2) makes arrangements to achieve, by the end of 1995, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within 5 years prior to the date of enactment of this Act and thereafter; and

(3) in the case of a State other than a State described in section 922(u)(1)(D) of title 18, United States Code, establishes, by the end of 1993, procedures under which State and local law enforcement officers to whom statements are provided pursuant to section 922(c)(2) or 922(u)(1)(A)(i)(III) of title 18, United States Code, are required to make a reasonable effort to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun, using whatever Federal, State, and local recordkeeping systems are readily available for this purpose.

(c) ALLOCATION.—Funds appropriated for grants under subsection (a) shall be allocated as follows:

(1) 50 percent of such funds shall be allocated among the States in accordance with their respective populations.

(2) 50 percent of such funds shall be allocated among the States at the discretion of the Attorney General.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (a) a total of $40,000,000 for fiscal year 1992 and all fiscal years thereafter.

AMENDMENT NO. 478

In lieu of the matter proposed to be stricken, insert the following:

SEC. 1. SHORT TITLE.

This Act may be cited as the "Brady Handgun Violence Prevention Act."

SEC. 2. WAITING PERIOD REQUIRED BEFORE PURCHASE OF HANDGUN.

(a) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(u)(1) It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (2);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within one day after the transferee furnishes the statement, provided a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 7 days have elapsed from the date the transferee furnished the statement, and the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10 day period ending on the date of the most recent proposal of such transfer by the transferee, which states that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit which—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(D) the law of the State—

"(i) prohibits any licensed importer, licensed manufacturer, or licensed dealer from transferring a handgun to an individual who is not licensed under section 923, before at least 7 days have elapsed from the date the transferee proposes such transfer; or

"(ii) requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verifies that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law; or

"(E) the transferor has received a report from any system of felon identification es-

tablished by the Attorney General pursuant to section 6213(a) of the Anti-Drug Abuse Act of 1988, that available information does not indicate that possesion or receipt of a handgun by the transferee would violate Federal, State, or local law.

"(2) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(3) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(4) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(5)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with paragraph (1)(A)(i)(III) with respect to the statement.

"(B) Unless the chief law enforcement officer to whom a copy of the statement is sent determines that a transaction would violate Federal, State, or local law, the officer shall, within 30 days after the date the transferee made such statement, destroy such copy and any record containing information derived from the statement.

"(6) For purposes of this subsection, the term, 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer, or the designee of any such individual.

"(7) This subsection shall not apply to the sale of a firearm in the circumstances described in subsection (c).

"(8) The Secretary shall take necessary actions to assure that the provisions of this subsection are published and disseminated to dealers and to the public.

"(9) A chief law enforcement officer shall not be liable to any person for action taken by the officer to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun under any Federal, State, or local law except a law that specifically provides for such liability.".

(b) HANDGUN DEFINED.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(31) The term 'handgun' means—

"(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

"(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.".

(c) PENALTY.—Section 924(a) of such title is amended—

(1) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922(u) shall be fined not more than $1,000, imprisoned for not more than one year, or both.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in 95 or more days after the date of the enactment of this Act.

SEC. 3. GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS AND TO DEFRAY THE COSTS OF BACKGROUND CHECKS.

(a) IN GENERAL.—The Attorney General shall, subject to appropriations, make a grant to an eligible State to be used—

(1) for the creation of a computerized criminal history record system or improvement of an existing system; and

(2) to defray the costs to state and local law enforcement agencies of conducting background checks of prospective handgun purchasers.

(b) ELIGIBLE STATES.—An eligible State under subsection (a) is one that—

(1) participates in, or makes arrangements to begin participating in by the end of 1993, the Interstate Identification Index operated by the Federal Bureau of Investigation;

(2) makes arrangements to achieve, by the end of 1995, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within 5 years prior to the date of enactment of this Act and thereafter; and

(3) in the case of a State other than a State described in section 922(u)(1)(D) of title 18, United States Code, establishes, by the end of 1993, procedures under which State and local law enforcement officers to whom statements are provided pursuant to section 922(c)(2) or 922(u)(1)(A)(III) of title 18, United States Code, are required to make a reasonable effort to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun, using whatever Federal, State, and local recordkeeping systems are readily available for this purpose.

(c) ALLOCATION.—Funds appropriated for grants under subsection (a) shall be allocated as follows:

(1) 50 percent of such funds shall be allocated among the States in accordance with their respective populations.

(2) 50 percent of such funds shall be allocated among the States at the discretion of the Attorney General.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (a) a total of $40,000,000 for fiscal year 1992 and all fiscal years thereafter.

AMENDMENT NO. 479

In lieu of the matter proposed to be stricken, insert the following:

SEC. 1. SHORT TITLE.

This Act may be cited as the "Brady Handgun Violence Prevention Act."

SEC. 2. WAITING PERIOD REQUIRED BEFORE PURCHASE OF HANDGUN.

(a) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(u)(1) It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (2);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within one day after the transferee furnishes the statement, provided a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 7 days have elapsed from the date the transferee furnished the statement, and the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10 day period ending on the date of the most recent proposal of such transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit which—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(D) the law of the State—

"(i) prohibits any licensed importer, licensed manufacturer, or licensed dealer from transferring a handgun to an individual who is not licensed under section 923, before at least 7 days have elapsed from the date the transferee proposes such transfer; or

"(ii) requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verifies that the information available to such official does not indicate that posses-

sion of a handgun by the transferee would be in violation of law; or

"(E) the transferor has received a report from any system of felon identification established by the Attorney General pursuant to section 6213(a) of the Anti-Drug Abuse Act of 1988, that available information does not indicate that possession or receipt of a handgun by the transferee would violate Federal, State, or local law.

"(2) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(3) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(4) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(5)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with paragraph (1)(A)(i)(III) with respect to the statement.

"(B) Unless the chief law enforcement officer to whom a copy of the statement is sent determines that a transaction would violate Federal, State, or local law, the officer shall, within 30 days after the date the transferee made such statement, destroy such copy and any record containing information derived from the statement.

"(6) For purposes of this subsection, the term, 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer, or the designee of any such individual.

"(7) This subsection shall not apply to the sale of a firearm in the circumstances described in subsection (c).

"(8) The Secretary shall take necessary actions to assure that the provisions of this subsection are published and disseminated to dealers and to the public.

"(9) A chief law enforcement officer shall not be liable to any person for action taken by the officer to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the transferee receiving a handgun under any Federal, State, or local law except a law that specifically provides for such liability.".

"(b) HANDGUN DEFINED.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(31) The term 'handgun' means—

"(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

"(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.".

(c) PENALTY.—Section 924(a) of such title is amended—

(1) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922(u) shall be fined not more than $1,000, imprisoned for not more than one year, or both.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in 95 or more days after the date of the enactment of this Act.

SEC. 3. GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS AND TO DEFRAY THE COSTS OF BACKGROUND CHECKS.

(a) IN GENERAL.—The Attorney General shall, subject to appropriations, make a grant to an eligible State to be used—

(1) for the creation of a computerized criminal history record system or improvement of an existing system; and

(2) to defray the costs of State and local law enforcement agencies of conducting background checks of prospective handgun purchasers.

(b) ELIGIBLE STATES.—An eligible State under subsection (a) is one that—

"(1) participates in, or makes arrangements to begin participating in by the end of 1993, the Interstate Identification Index operated by the Federal Bureau of Investigation;

"(2) makes arrangements to achieve, by the end of 1995, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within 5 years prior to the date of enactment of this Act and thereafter; and

"(3) in the case of a State other than a State described in section 922(u)(1)(D) of title 18, United States Code, establishes, by the end of 1993, procedures under which State and local law enforcement officers to whom statements are provided pursuant to section 922(c)(2) or 922(u)(1)(A)(i)(III) of title 18, United States Code, are required to make a reasonable effort to ascertain whether a transferee of a handgun has a criminal record or whether there is any other legal impediment to the tansferee receiving a handgun, using whatever Federal, State, and local recordkeeping systems are readily available for this purposes.

(c) ALLOCATION.—Funds appropriated for grants under subsection (a) shall be allocated as follows:

(1) 50 percent of such funds shall be allocated among the States in accordance with their respective populations.

(2) 50 percent of such funds shall be allocated among the States at the discretion of the Attorney General.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (a) a total of $40,000,000 for fiscal year 1992 and all fiscal years thereafter.

HATCH AMENDMENT NO. 480

(Ordered to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place add the following:

SEC. . Section 3432 of title 18, United States Code, is amended by striking "the veniremen, and of", and by striking "venireman and".

THURMOND AMENDMENTS NOS. 481 THROUGH 483

(Ordered to lie on the table.)

Mr. THURMOND submitted three amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT NO. 481

At the appropriate place add the following:

Subtitle A—Sentencing and Magistrates Amendments

SEC. 101. CORRECTION OF RESENTENCING SANCTION FOR REVOCATION OF PROHIBITION FOR POSSESSION OF A CONTROLLED SUBSTANCE.

Section 3565(a) of title 18, United States Code, is amended by striking "sentence the defendant to not less than one-third of the original sentence" and inserting in lieu thereof "resentence the defendant under subchapter A to a sentence that includes a term of imprisonment.".

SEC. 102. AUTHORIZATION OF PROHIBITION FOR PETTY OFFENSES IN CERTAIN CASES.

Section 3561(a)(3) of title 18, United States Code, is amended by adding at the end: "However, this paragraph does not preclude the imposition of a sentence to a term of prohibition for a petty offense if the defendant has been sentenced to a term of imprisonment at the same time for another such offense.".

SEC. 103. TRIAL BY A MAGISTRATE IN PETTY OFFENSE CASES.

Section 3401 of title 18, United States Code, is amended—

(1) in subsection (b) by adding "other than a petty offense" after misdemeanor"; and

(2) in subsection (g) by amending the first sentence to read as follows: "The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under chapter 403 of this title."

SEC. 104. CONFORMING AUTHORITY FOR MAGISTRATES TO REVOKE SUPERVISED RELEASE IN ADDITION TO PROBATION IN MISDEMEANOR CASES IN WHICH THE MAGISTRATE IMPOSED SENTENCE.

Section 3401(d) of title 18, United States Code, is amended by adding at the end the following: "A magistrate judge who has sentenced a person to a term of supervised release shall also have power to revoke or modify the term or conditions of such supervised release."

SEC. 105. AVAILABILITY OF SUPERVISED RELEASE FOR JUVENILE OFFENDERS.

Section 5037 of title 18, United States Code, is amended—

(1) in subsection (a) by striking "place him on probation, or commit him to official de-

tention" and inserting in lieu thereof "place the juvenile on probation, or commit the juvenile to official detention (including the possibility of a term of supervised release)" and by striking "subsection (d)" and inserting in lieu thereof "subsection (e)"; and

(2) by redesignating subsection (d) as subsection (e) and adding a new subsection (d), as follows:

"(d) The term for which supervised release may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—

(A) the date when the juvenile becomes twenty-one years old; or

(B) the maximum term that would be authorized by section 3583(b) if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old—

(A) who if convicted as an adult would be convicted of a Class A, B, or C felony, beyond five years; or

(B) if any other case beyond the lesser of—

(i) three years; or

(ii) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult.".

Subtitle B—White Collar Crime Amendments

SEC. 201. RECEIVING THE PROCEEDS OF A POSTAL ROBBERY.

Section 2114 of title 18, United States Code, is amended—

(1) by designating the existing matter as subsection (a); and

(2) by adding at the end the following new subsection:

"(b) Whoever receives, possesses, conceals, or disposes of any money or other property which has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be imprisoned not more than ten years, fined under this title, or both.".

SEC. 202. RECEIVING THE PROCEEDS OF EXTORTION OR KIDNAPPING.

(a) Chapter 41 of title 18, United States Code, is amended—

(1) by adding at the end thereof the following new section:

"§ 880. Receiving the proceeds of extortion

"Whoever receives, possesses, conceals, or disposes of any money or other property which was obtained from the commission of any offense under this chapter that is punishable by imprisonment for more than one year, knowing the same to have been unlawfully obtained, shall be imprisoned not more than three years, fined under this title, or both."; and

(2) in the table of sections, by adding at the end thereof the following item: "880. Receiving the proceeds of extortion."

(b) Section 1202 of title 18, United States Code, is amended—

(1) by designating the existing matter as subsection "(a)"; and

(2) by adding the following new subsections:

"(b) Whoever transports, transmits, or transfers in interstate or foreign commerce any proceeds of a kidnapping punishable under State law by imprisonment for more than one year, or receives, possesses, conceals, or disposes of any such proceeds after they have crossed a State or United States boundary, knowing the proceeds to have been unlawfully obtained, shall be imprisoned not more than ten years, fined under this title, or both".

"(c) For purposes of this section, the term 'State' has the meaning set forth in section 245(d) of this title.

SEC. 203. CONFORMING ADDITION TO OBSTRUCTION OF CIVIL INVESTIGATIVE DEMAND STATUTE.

Section 1505 of title 18, United States Code, is amended by inserting "section 1968 of this title, section 3733 of title 31, United States Code or" before "the Antitrust Civil Process Act".

SEC. 204. CONFORMING AMENDMENTS TO 18 U.S.C. 3322.

Section 3322 of title 18, United States Code, is amended—

(1) in subsection (a) by inserting "or (D)" after "section 981(a)(1)(C)"; and

(2) in subsection (d) by inserting "225," after "215," and by inserting ", 1032," after "1014,".

SEC. 205. CONFORMING ADDITION OF PREDICATE OFFENSES TO FINANCIAL INSTITUTIONS REWARDS STATUTE.

Section 3059A of title 18, United States Code is amended—

(1) by inserting "225," after "215";

(2) by striking "or" before "1344"; and

(3) by inserting ", or 1517" after "1344".

SEC. 206. DEFINITION OF SAVINGS AND LOAN ASSOCIATION IN BANK ROBBERY STATUTE.

Section 2113 of title 18, United States Code, is amended by adding at the end the following:

"(h) As used in this section, the term 'savings and loan association' means (1) any Federal saving association or State savings association (as defined in section 3(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)) having accounts insured by the Federal Deposit Insurance Corporation, and (2) any corporation described in section 3(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)(C)) which is operating under the laws of the United States.".

SEC. 207. CONFORMING DEFINITION OF "1 YEAR PERIOD" IN 18 U.S.C. 1516.

Section 1516(b) of title 18, United States Code, is amended—

(1) by inserting "(i)" before "the term"; and

(2) by inserting before the period the following: ", and (ii) the term "in any 1 year period" has the meaning given to the term 'in any one-year period' in section 666 of this title.

Subtitle C—Miscellaneous Amendments

SEC. 301. SEXUAL ABUSE AMENDMENTS.

(a) DEFINITIONS OF SEXUAL ACT AND SEXUAL CONTACT. FOR VICTIMS UNDER THE AGE OF 16.—Paragraph (2) of section 2245 of title 18, United States Code, is amended—

(i) in subparagraph (B) by striking "or" after the semicolon;

(ii) In subparagraph (C) by striking "; and" and inserting in lieu thereof "; and

(iii) by inserting a new subparagraph (D) as follows:

"(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;".

(b) REDESIGNATION OF SECTION.—Section 2245 of title 18, United Sttes Code, is redisignated section 2246.

(c) PENALTIES FOR SUBSEQUENT OFFENSES.—Chapter 109A of title 18, United States Code, is amended by inserting the following new section after secton 2244;

"2245. Penalties for subsequent offenses

"Any person who violates a provision of this chapter after a prior conviction under a provision of this chapter or the law of a State (as defined in section 513 of this title) for conduct proscribed by this chapter has become final is punishable by a term of imprisonment up to twice that otherwise authorized.".

(d) TABLE OF SECTIONS.—The table of sections for chapter 109A of title 18, United States Code, is amended by—

(1) striking "2245" and inserting in lieu thereof "2246"; and

(2) inserting the following after the item relating to section 2244:

"2245. Penalties for subsequent offenses.".

SEC. 302. OPTIONAL VENUE FOR ESPIONAGE AND RELATED OFFENSES.

(a) IN GENERAL.—Chapter 211 of title 18, United States Code, is amended by inserting:

"§ 3239. Optional venue for espionage and related offenses.

"The trial for any offense involving a violation, begun or committed upon the high seas or elsewhere out of the jurisdiction of any particular State or district, of—

"(1) section 793, 794, 798, or section 1030(a)(1) of this title;

"(2) section 601 of the National Security Act of 1947 (50 U.S.C. 421); or

"(3) section 4(b) or 4(c) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b) or (c)); may be in the District of Columbia or in any other district authorized by law.".

(b) CLERICAL AMENDMENT.—The item relating to section 3239 in the table of sections at the beginning of chapter 211 of title 18, United States Code, is amended to read as follows:

"Optional venue for espionage and related offense.".

SEC. 303. GRAND JURY ACCESS TO CERTAIN RECORDS.

Section 631 of the Communications Act of 1934 (47 U.S.C. 551) is amended by adding at the end thereof the following new subsection:

"(i) EXCEPTION FOR FEDERAL GRAND JURY PROCEEDING.—Nothing in this section shall apply to any subpoena or court order issued in connection with proceedings before a Federal grand jury.".

SEC. 304. AUTHORIZATION FOR ONE ADDITIONAL CRIMINAL DIVISION EMPLOYEE TO APPROVE CERTAIN COURT APPLICATIONS.

(a) Section 2516(1) of title 18, United States Code, is amended by striking "or any Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General" and inserting in lieu thereof "or nay Deputy Assistant Attorney General in, or one other officer or employee of, the Criminal Division specially designated by the Attorney General"; and

(b) Section 6003(b) of title 18, United States Code, is amended by—

(1) striking "or" before "Deputy Assistant Attorney General" and inserting in lieu thereof a comma, and

(2) inserting "or one other officer or employee of the Criminal Division designated by the Attorney General" after "Deputy Assistant Attorney General".

SEC. 305. CONFORMING AMENDMENT TO THE ELECTRONIC COMMUNICATIONS PRIVACY ACT.

Section 2705(a)(1)(B) of title 18, United States Codes, is amended by inserting "or trial" after "grand jury".

SEC. 306. CLARIFICATION OF INAPPLICABILITY OF 18 U.S.C. 2515 TO CERTAIN DISCLOSURES.

Section 2515 of title 18, United States Code, is amended by adding at the end the following: "This section shall not apply to the disclosure by the United States, a State, or a

political subdivision thereof in a criminal trial or hearing or before a grand jury of the contents of a wire or oral communication, or evidence derived therefrom, the interception of which was in violation of section 2511(2)(d).".

SEC. 307. DISCLOSURE OF CONTENTS OF A LAWFUL INTERCEPTION WITH INTENT TO OBSTRUCT A CRIMINAL INVESTIGATION.

(a) Section 2511(1) of title 18, United States Code, is amended—(1) by striking "or" at the end of paragraph (c);

(2) by inserting "or" after the semicolon at the end of paragraph (d); and

(3) by adding the following new paragraph:

"(e) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by this chapter, knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, with intent to obstruct, impede, or interfere with a criminal investigation";

(b) Section 2515 of title 18, United States Code, is amended by adding at the end the following new paragraph:

"This section shall not apply to the admission into evidence of the contents of a wire or oral communication, or evidence derived therefrom, which has been disclosed in violation of section 2511(1)(e).".

SEC. 308. DEFINITION OF LIVESTOCK.

Section 2311 of title 18, United States Code, is amended by inserting after the second paragraph relating to the definition of "cattle" the following:

"Livestock means any domestic animals raised for home use, consumption, or profit, such as horses, pigs, goats, fowl, sheep, and cattle, or the carcasses thereof;".

SEC. 309. LEADERSHIP ROLE IN CRIME AS FACTOR FOR TRANSFERRING A JUVENILE TO ADULT STATUS.

Section 5032 of title 18, United States Code, is amended in the fifth undesignated paragraph by adding at the end the following: "In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use and distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh heavily in favor of a transfer to adult status, but the absence of such factor shall not preclude such a transfer.".

SEC. 310. CONFORMING AMENDMENT TO PRECLUSION OF NOTICE OF ELECTRONIC COMMUNICATIONS PRIVACY ACT.

Section 2705(b) of title 18, United States Code, is amended by inserting "or 2703(c)(1)" after "when it is not required to notify the subscriber or customer under section 2703(b)(1)".

Subtitle D—Technical Amendments

SEC. 401. CORRECTIONS OF ERRONEOUS CROSS-REFERENCES AND MISDESIGNATIONS.

(1) Section 1791(b) of title 18, United States Code, is amended by striking "(c)" wherever it appears and inserting in lieu thereof "(d)";

(2) Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking "section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207-51; 21 U.S.C. 857)" and inserting in lieu thereof "section 422 of the Controlled Substances Act (21 U.S.C. 863)";

(3) Section 2703(d) of title 18, United States Code, is amended by striking "section 3126(2)(A)" and inserting in lieu thereof "section 3127(2)(A)";

(4) Section 666(d) of title 18, United States Code, is amended by redesignating the fourth paragraph relating to the definition of the term "State" as paragraph (5).

(5) Section 4247(h) of title 18, United States Code, is amended by striking "subsection (e) of section 4241, 4243, 4244, 4245, or 4246," and inserting in lieu thereof "subsection (e) of section 4241, 4244, 4245, or 4246, or subsection (f) of section 4243,";

(6) Section 408(b)(2)(A) of the Controlled Substances Act (21 U.S.C. 848(b)(2)(A)) is amended by striking "subsection (d)(1)" and inserting in lieu thereof "subsection (c)(1)";

(7)(a) Section 994(h) of title 28, United States Code, is amended by striking "section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)" each place it appears and inserting in lieu thereof "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)"; (b) section 924(e) of title 18, United States Code, is amended by striking "the first section or section 3 of Public Law 96-350 (21 U.S.C. 955a seq.)" and inserting in lieu thereof "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

(8) Section 2596(d) of the Crime Control Act of 1990 is amended, effective retroactively to the date of enactment of such Act, by striking "951(c)(1)" and inserting in lieu thereof "951(c)(2)"; and

(9) Section 1031 of title 18, United States Code, is amended by redesignating subsection (g) as enacted by Public Law 101-123 as subsection (h).

SEC. 402. REPEAL OF OBSOLETE PROVISIONS IN TITLE 18

Title 18, United States Code, is amended—

(1) in section 212, by striking "or of any National Agricultural Credit Corporation," and by striking "or National Agricultural Credit Corporations";

(2) in section 213, by striking "or examiner of National Agricultural Credit Corporations";

(3) in section 709, by repealing the seventh and thirteenth paragraphs;

(4) in section 711, by repealing the second paragraph;

(5) by repealing section 754 and amending the table of sections for chapter 35 accordingly;

(6) in sections 657 and 1006, by striking "Reconstruction Finance Corporation,", and by striking "Farmers' Home Corporation,";

(7) in section 658, by striking "Farmers' Home Corporation,";

(8) in section 1013, by striking ", or by any National Agricultural Credit Corporation";

(9) in section 1014, by striking "Reconstruction Finance Corporation," by striking "Farmers' Home Corporation," and by striking the second comma following the words "Federal Reserve Act";

(10) in section 1160, by striking "white person" and inserting in lieu thereof "non-Indian";

(11) in section 1698, by repealing the second paragraph;

(12) by repealing sections 1904 and 1908 and amending the table of sections for chapter 93 accordingly;

(13) in section 1909, by inserting "or" before "farm credit examiner" and by striking "or an examiner of National Agricultural Credit Corporations,";

(14) by repealing sections 2157 and 2391 and amending the table of sections for chapters 105 and 115 accordingly;

(15) in section 2257 by repealing the subsections (f) and (g) that were enacted by Public Law 100-690;

(16) in section 3113, by repealing the third paragraph; and

(17) in section 3281, by striking "except for offenses barred by the provisions of law existing on August 4, 1939".

SEC. 403. CORRECTION OF DRAFTING ERROR IN THE FOREIGN CORRUPT PRACTICES ACT.

Section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2) is amended, in subsection (a)(3), by striking "issuer" and inserting in lieu thereof "domestic concern".

SEC. 404. ELIMINATION OF REDUNDANT PENALTY PROVISION IN 18 U.S.C. 1116.

Section 1116(a) of title 18, United States Code, is amended by striking ", and any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years".

SEC. 405. ELIMINATION OF REDUNDANT PENALTY.

Section 1864(c) of title 18, United States Code, is amended by striking "(b)(3), (4), or (5)" and inserting in lieu thereof "(b)(5)".

SEC. 406. CORRECTIONS OF MISSPELLINGS AND GRAMMATICAL ERRORS.

Title 18, United States Code, is amended:

(1) in section 151, by striking "mean" and inserting in lieu thereof "means";

(2) in section 513(c)(4), by striking "association or persons" and inserting in lieu thereof "association of persons";

(3) in section 1014, by striking the comma following a comma after "Act";

(4) in section 1956(e), by striking "Environmental" and inserting in lieu thereof "Environmental";

(5) in section 3125, by striking the quotation marks in paragraph (a)(2), and by striking "provider for" and inserting in lieu thereof "provider of" in subsection (d); and

(6) in section 3731, by striking "order of a district courts" and inserting in lieu thereof "order of a district court" in the second undesignated paragraph.

AMENDMENT NO. 482

At the appropriate place add the following:

SEC. 1. (a) KNOWLEDGE REQUIREMENT FOR STOLEN OR COUNTERFEIT PROPERTY.—Chapter 1 of title 18, United States Code, is amended by adding at the end thereof a new section, as follows:

"§ 21. Stolen or counterfeit nature of property for certain crimes defined

Wherever in this title it is an element of an offense that any property was embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated and that the defendant knew that the property was of such character, such element may be established by proof that the defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated. For purposes of this section, the term "official representation" means any representation made by a federal law enforcement officer (as defined in section 115) or by another person at the direction or with the approval of such an officer.

(b) TABLE OF SECTIONS.—The table of sections for chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following: "21. Stolen or counterfeit nature of property for certain crimes defined.".

SEC. 2. CONFORMING AMENDMENT.—Section 510(b) of title 18, United States Code, is amended by striking "that in fact is stolen

or bears a forged or falsely made endorsement or signature".

AMENDMENT No. 483

At the appropriate place add the following:

SEC. 232. ENHANCEMENT OF PENALTIES FOR DRUG TRAFFICKING IN PRISONS.

Section 1791 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting before "Any" the following new sentence: "Any punishment imposed under subsection (b) for a violation of this section involving a controlled substance shall be consecutive to any other sentence imposed by any court for an offense involving such a controlled substance.";

(2) in subsection (d)(1)(A), by inserting after "a firearm or destructive device" the words "or a controlled substance in schedule I or II, other than marijuana or a controlled substance referred to in subparagraph (C) of this subsection";

(3) in subsection (d)(1)(B), by inserting before "ammunition," the following: "marijuana or a controlled substance in schedule III, other than a controlled substance referred to in subparagraph (C) of this subsection,";

(4) in subsection (d)(1)(C), by inserting "methamphetamine, its salts, isomers, and salts of its isomers," after "a narcotic drug,";

(5) in subsection (d)(1)(D), by inserting "(A), (B), or" before "(C)"; and

(6) in subsection (b), by striking "(c)" each place it appears and inserting in lieu thereof "(d)".

SEC. 233. SEIZURE OF VEHICLES WITH CONCEALED COMPARTMENTS.

(a) Section 3 of the Anti-Smuggling Act of 1935 (19 U.S.C. 1703) is amended:

(1) by amending the title of such section to read as follows:

"Sec. 1703. Seizure and forfeiture of vessels, vehicles and other conveyances";

(2) by amending the title of subsection (a) to read as follows:

"(a) Vessels, vehicles and other conveyances subject to seizure and forfeiture";

(3) by amending the title of subsection (b) to read as follows:

"(b) Vessels, vehicles and other conveyances' defined";

(4) by inserting ", vehicle, or other conveyances" after the word "vessel" everywhere it appears in the text of subsections (a) and (b); and

(5) by amending subsection (c) to read as follows:

"(c) Acts constituting prima facie evidence of vessel, vehicle or other conveyance engaged in smuggling

"For the purposes of this section, prima facie evidence that a vessel, vehicle, or other conveyance is being, or has been, or is attempting to be employed in smuggling or to defraud the revenue of the United States shall be—

"(1) in the case of a vessel, the fact that a vessel has become subject to pursuit as provided in section 1581 of title 17, United States Code, or is a hovering vessel, or that a vessel fails, at any place within the customs waters of the United States or within a customs-enforcement area, to display lights as required by law.

"(2) in the case of a vehicle or other conveyance, the fact that a vehicle or other conveyance has any compartment or equipment that is built or fitted out for smuggling.".

(b) The table of sections for Chapter 5 of title 19, United States Code, is amended by striking the items relating to section 1703 and inserting in lieu thereof the following:

"1703. Seizure and forfeiture of vessels, vehicles and other conveyances.

"(a) Vessels, vehicles and other conveyances subject to seizure and forfeiture.

"(b) Vessels, vehicles and other conveyances defined.

"(c) Acts constituting prima facie evidence of vessel, vehicles or other conveyances engaged in smuggling.".

SEC. 234. CLOSE LOOPHOLE FOR ILLEGAL IMPORTATION OF SMALL DRUG QUANTITIES.

Section 497(a)(2)(A) of the Tariff act of 1930 (19 U.S.C. 1497(a)(2)(A)) is amended by adding "or $500, whichever is greater" after "value of the article".

SEC. 236. DRUG PARAPHERNALIA AMENDMENT.

Section 422 of the Controlled Substances Act (21 U.S.C. 863) is amended by adding the following new subsection (g):

"(g) Civil Enforcement.

"The Attorney General may bring a civil action against any person who violates the provisions of this section. The action may be brought in any district court of the United States or the United States courts of any territory in which the violation is taking or has taken place. The court in which such action is brought shall determine the existence of any violation by a preponderance of the evidence, and shall have the power to assess a civil penalty of up to $100,000 and to grant such other relief, including injunctions, as may be appropriate. Such remedies shall be in addition to any other remedy available under statutory or common law.".

SEC. 238. CONFORMING AMENDMENTS CONCERNING MARIHUANA.

(a) Section 401(b)(1)(D) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(D)) and section 1010(b)(4) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(4)) are each amended by striking out "with respect to less than 50 kilograms of marihuana" and inserting in lieu thereof, "with respect to less than 50 kilograms of a mixture or substance containing a detectable amount of marihuana";

(b) Section 1010(b)(4) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(4)) is amended by striking out "except in the case of 100 or more marihuana plants" and inserting in lieu thereof "except in the case of 50 or more marihuana plants".

SEC. 239. ADDITION OF DRUG CONSPIRACIES AND ATTEMPTS AND SERIOUS CRACK POSSESSION OFFENSES BY JUVENILES AS WARRANTING ADULT PROSECUTION.

Section 5032 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841) or sections 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 960(b)(1), (2), or (3))," and inserting in lieu thereof "an offense (or conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1003, 1005, 1009, 1010(b)(1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), or (3), or 963),"; and

(2) in the fourth undesignated paragraph—

(A) by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959)" and inserting in lieu thereof "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), or section 1002(a), 1005, 1009, 1010(b)(1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959, 960(b)(1), (2), or (3), or 963)"; and

(B) by striking "subsection (b)(1)(A), (B), or (C), (D), or (e) of section 401 of the Controlled Substances Act, or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), (3))" and inserting in lieu thereof "or an offense (or conspiracy or attempt to commit an offense) described in section 401(b)(1)(A), (B), or (C), (d), or (e), or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), (B), or (C), (d), or (e), 844 or 846, or section 1002(a), 1003, 1009, 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), or (3), or 963)".

SEC. 241. CONFORMING AMENDMENT ADDING CERTAIN DRUG OFFENSES AS REQUIRING FINGERPRINTING AND RECORDS FOR RECIDIVIST JUVENILES.

Sections 5038(d) and (f) of title 18, United States Code, are each amended by striking "or an offense described in sections 841, 952(a), 955, or 959, of title 21," and inserting in lieu thereof "or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841) or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a) 953, 955, 959, or 960(b)(1), (2), or (3)),".

SEC. 242. CLARIFICATION OF NARCOTIC OR OTHER DANGEROUS DRUGS UNDER THE RICO STATUTE.

Section 1961(1) of title 18, United States Code, is amended by striking "narcotic or other dangerous drugs" each place those words appear and inserting in lieu thereof "a controlled substance or listed chemical, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)".

SEC. 243. CONFORMING AMENDMENTS TO RECIDIVIST PENALTY PROVISIONS OF THE CONTROLLED SUBSTANCES ACT AND THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.

(1) Sections 401(b)(1)(B), (C), and (D) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(B), (C), and (D) and sections 1010(b)(1), (2), and (3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1), (2), and (3)) are each amended in the sentence or sentences beginning "If any person commits" by striking "one or more prior convictions" through "have become final" and inserting in lieu thereof "a prior conviction for a felony drug offense has become final";

(2) Section 1012(b) of the Controlled Substances Import and Export Act (21 U.S.C. 962(b)) is amended by striking "one or more prior convictions of him for a felony under any provision of this subchapter or subchapter I of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant drugs, have become final" and inserting in lieu thereof "one or

more prior convictions of such person for a felony drug offense have become final";

(3) Section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended by striking the sentence beginning "For purposes of this subparagraph, the term 'felony drug offense' means";

(4) Section 401 of the Controlled Substances Act (21 U.S.C. 841) and section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) are each amended by adding a new subsection (c), as follows:

"(c) For purposes of this title, the term 'felony drug offense' means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances."; and

(5) Section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)) is amended by adding after the sentence beginning "If any person commits" the following: "If any person commits a violation of this paragraph or of section 418, 419, or 420 of the Controlled Substances Act after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence.".

SEC. 244. ELIMINATION OF OUTMODED LANGUAGE RELATING TO PAROLE.

(a) Sections 401(b)(1)(A) and (B) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A) and (B)) are each amended by striking "No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.";

(b) Sections 1010(b)(1) and (2) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1) and (2)) are each amended by striking "No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.";

(c) Section 419(c) of the Controlled Substances Act (21 U.S.C. 860(c)) is amended by striking "; parole" in the heading of such section and by striking "An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section.";

(d) Section 420(e) of the Controlled Substances Act (21 U.S.C. 861(a)) is amended by striking "; parole" in the heading of such section and by striking "An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is applicable shall not be eligible for parole under section 4202 of title 18 until the individual has served the mandatory term of imprisonment as enhanced by this section.".

SEC. 245. CONFORMING AMENDMENT TO PROVISION PUNISHING A SECOND OFFENSE OF DISTRIBUTING DRUGS TO A MINOR.

Section 418(b) of the Controlled Substances Act (21 U.S.C. 859(b)) is amended by striking "one year" and inserting in lieu thereof "three years".

MITCHELL AMENDMENT NO. 484

(Ordered to lie on the table.)

Mr. MITCHELL submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

On page 236, strike line 7 and all that follows through the end of the bill and insert the following:

TITLE XXVII—FELON FIREARM PURCHASE PREVENTION ACT OF 1991

SEC. 2701. SHORT TITLE.

This title may be cited as the "Felon Firearm Purchase Prevention Act of 1991".

SEC. 2702. FEDERAL FIREARMS LICENSEE REQUIRED TO CONDUCT CRIMINAL BACKGROUND CHECK BEFORE TRANSFER OF FIREARM TO NONLICENSEE.

(a) INTERIM PROVISION.—Section 922 of title 18, United States Code, as amended by section 702 of this Act, is amended by adding at the end the following new subsection:

"(u)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the date that the Attorney General certifies that the national instant criminal background check system is in compliance with section 2703(d)(3) of the Felon Firearm Purchase Prevention Act of 1991, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)(I) 5 days have elapsed from the date the transferee furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stting that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit that—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(D) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; and

"(E) on application of the transferor, the Secretary has certified that compliance with subparagraph (A)(i)(III) is impracticable because of the inability of the transferor to communicate with the chief law enforcement officer because of the remote location of the licensed premises.

"(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragrph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 days whether the transferee has a criminal record or whether there is any other legal impediment to the transferee's receiving a handgun, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

"(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(4) The chief law enforcement officer of the place of residence of a prospecitve transferee of a handgun, at the request of a person who alleges the person requires access to a handgun because of threat to the life of the person or a member of the household of the person, shall immediately meet with the person and forthwith sign a written statement described in paragraph (1)(B) unless the officer has clear and convincing evidence that no threat was made to the life of the person or any member of the household of the person.

"(5) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(6) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(7)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction.

"(B)(i) Unless the chief law enforcement officer to whom notice is provided under paragraph (1)(A)(i)(III) determines that a transaction would violate Federal, State, or local law, the officer shall, within 5 days after the date the transferee made such statement, destroy any record containing information derived from such statement.

"(ii) Information conveyed to a chief law enforcement officer under paragraph (1)(A)(i)(III)—

"(I) shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

"(II) shall not be used for any purpose other than to carry out this subsection.

"(8) A chief law enforcmenet officer shall not be liable in an action at law for damages for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section.

"(9) For purposes of this subsection, the term 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer or the deisgnee of any such individual.

"(10) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers and to the public.".

(b) PERMANENT PROVISION.—Section 922 of title 18, United States Code, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(v)(1) Beginning on the date that the Attorney General certifies that the national instant criminal background check system is in compliance with section 2703(d)(1) of the Felon Firearm Purchase Prevention Act of 1991, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm from the business inventory of the licensee to any other person who is not such a licensee, unless—

"(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 2703 of the Felon Firearm Purchase Prevention Act of 1991; and

"(B) the system notifies the licensee that the system has not located any record that demonstrates that the receipt of a firearm by such other person would violate subsection (g) or (h) of this seciton.

"(2) Paragraph (1) shall not apply to a firearm transfer between a licensee and anotehr person if—

"(A) such otehr person presents to the licensee a valid permit or license, issued by the State or political subdivision thereof in which the transfer is to occur, that authorizes such other person to purchase, possess, or carry a firearm;

"(B) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(C) on application of the transferor, the Secretary has certified that compliance with paragraph (1)(A) is impracticable because of the inability of the transferor to communicate with the national instant criminal background check system because of the remote location of the licenses premises.

"(3) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n), and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

"(4) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n), the Secretary may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under this section, and may impose on the licensee a civil fine of not more than $5,000.

"(5) A State employee responsible for providing information to the national instant criminal background check system shall not be liable in an action at law for damages for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section.".

(c) PENALTY.—Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking "(2) or (3)" and inserting "(2), (3), or (4)"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922 (u) or (v) shall be fined not more than $1,000, imprisoned for not more than 1 year, or both.".

SEC. 2703. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

(a) ESTABLISHMENT OF SYSTEM.—The Attorney General of the United States shall establish a national instant criminal background check system that any licensee may contact for information on whether receipt of a firearm by a prospective transferee thereof would violate section 922(g) or (n) of title 18, United States Code.

(b) EXPEDITED ACTION BY THE ATTORNEY GENERAL.—The Attorney general shall expedite—

(1) the incorporation of State criminal history records into the Federal criminal records system maintained by the Federal Bureau of Investigation;

(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(c) PROVISION OF STATE CRIMINAL RECORDS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall—

(1) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems will communicate with the national system;

(2) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on line capacity basis to the national system;

(3) notify each State of the determinations made pursuant to paragraphs (1) and (2).

The Attorney General shall require as a part of the State timetable that the State achieve, by the end of 5 years after the date of enactment of this Act, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within the last 5 years.

(d) NATIONAL SYSTEM CERTIFICATION.—(1) On or after the date that is 30 months after the date of enactment of this Act, the Attorney General shall certify—

(A) the date the national system has achieved at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within the last 5 years on a national average basis; and

(B) the date each State is in compliance with the timetable established pursuant to subsection (b).

(2) The Attorney General shall certify that, after 5 years after the date of enactment of this Act, a State is not in compliance with its timetable and the date after such period that the State achieves compliance.

(3) The date on which all States are in compliance with the timetable the provisions of section 922(u) of title 18, United States Code is repealed with respect to all States.

(e) NOTIFICATION OF LICENSEES.—On establishment of the system under this section, the Attorney General shall notify each licensee of the existence and purpose of the system and the means to be used to contact the system.

(f) ADMINISTRATIVE PROVISIONS.—

(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION.—Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on perso'ns for whom receipt of a firearm would violate section 922(g) or (n) of title 18, United States Code as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

(2) OTHER AUTHORITY.—The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION.—If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate section 922(g) or (n) of title 18, United States Code, the transferee may request the Attorney General to provide such other person with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The transferee may submit to the Attorney General information to correct, clarify, or supplement records of the system with respect to the transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

(h) REGULATIONS.—After 90 days notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(i) PROHIBITIONS RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS.—No department, agency, officer, or employee of the United States may—

(1) require that any record or portion thereof maintained by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited by section 922(g) or (n) of title 18, United States Code, from receiving a firearm.

(j) DEFINITIONS.—As used in this section:

(1) LICENSEE.—The term "licensee" means a licensed importer, licensed manufacturer, or licensed dealer under section 923 of title 18, United States Code.

(2) OTHER TERMS.—The terms "firearm", "licensed importer", "licensed manufacturer", and "licensed dealer" have the meanings stated in section 921(a) (3), (9), (10), and (11), respectively, of title 18, United States Code.

SEC. 2704. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS.

(a) IMPROVEMENTS IN STATE RECORDS.—

(1) USE OF FORMULA GRANTS.—Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(1) in paragraph (2) by striking "and" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; and "; and

(3) by adding at the end the following new paragraph:

"(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), and (2), and (3) and the records required by the Attorney General under section 3 of the Felon Firearm Purchase Prevention Act of 1991 with the Attorney General for the purpose of implementing the Felon Firearm Purchase Prevention Act of 1991.".

(2) ADDITIONAL FUNDING.—

(A) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS.—The Attorney General shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

(i) for the creation of a computerized criminal history record system or improvement of an existing system;

(ii) to improve accessibility to the national instant criminal background system; and

(iii) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subparagraph (A) a total of $100,000,000 for fiscal year 1992 and all fiscal years thereafter.

(b) WITHHOLDING STATE FUNDS.—Effective on the effective date of section 922(v) of title 18, United States Code, the Attorney General may reduce by 10 percent the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 of a State that has not provided criminal background information to the national instant criminal background check system in compliance with subsection (b)(2) and shall reallocate that amount to the other States.

(c) WITHHOLDING OF DEPARTMENT OF JUSTICE FUNDS.—If the Attorney General does not certify the national instant criminal background check system pursuant to section 2703(d)(1) by—

(1) 30 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal year beginning in the calendar year that is 30 months after the date of enactment of this Act shall be reduced by 5 percent on a monthly basis; and

(2) 42 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal year beginning in the calendar year that is 42 months after the date of enactment of this Act shall be reduced by 10 percent on a monthly basis.

THURMOND AMENDMENTS NOS. 485 THROUGH 494

(Ordered to lie on the table.)

Mr. THURMOND submitted 10 amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT NO. 485

At the end of title XXIII insert the following:

"Nothing in this section shall be construed to alter or change current law or to inhibit the courts of the United States from expanding exceptions to the exclusion of evidence from criminal trials."

AMENDMENT NO. 486

Strike page 114, Line 13 through page 122, line 2 and in lieu thereof insert the following:

SEC. 901. SHORT TITLE.

This title may be cited as the "Police Officers' Bill of Rights Act of 1991".

SEC. 902. RIGHTS OF LAW ENFORCEMENT OFFICERS.

Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781 et seq.) is amended by adding at the end thereof the following new section:

"RIGHTS OF LAW ENFORCEMENT OFFICERS

"SEC. 819 (a) RIGHTS OF LAW ENFORCEMENT OFFICERS WHILE UNDER INVESTIGATION.—The States shall give consideration to adopting the standards and requirements contained in this section. These standards may require that when a law enforcement officer is under investigation or is subjected to questioning for any reason, other than in connection with an investigation or action described in subsection (h), under circumstances that could lead to disciplinary action, the following minimum standards apply:

"(1) Questioning of the law enforcement officer shall be conducted at a reasonable hour, preferably when the law enforcement officer is on duty, unless exigent circumstances otherwise require.

"(2) Questioning of the law enforcement officer shall take place at the offices of those conducting the investigation or the place where such law enforcement officer reports for duty unless the officer consents in writing to being questioned elsewhere.

"(3) The law enforcement officer under investigation shall be informed, at the commencement of any questioning, of the name, rank, and command of the officer conducting the questioning.

"(4) During any single period of questioning of the law enforcement officer, all questions shall be asked by or through a single investigator.

"(5) The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any questioning.

"(6) Any questioning of a law enforcement officer in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods for the rest and personal necessities of the law enforcement officer.

"(7) No threat against, harassment of, or promise or reward (except an officer of immunity from prosecution) to any law enforcement officer shall be made in connection with an investigation to induce the answering of any question.

"(8) All questioning of any law enforcement officer in connection with the investigation shall be recorded in full in writing or by electronic device, and a copy of the transcript shall be made available to the officer under investigation.

"(9) The law enforcement officer under investigation shall be entitled to the presense of counsel (or any other one person of the officer's choice) at any questioning of the officer, unless the officer consents in writing to being questioned outside the presence of counsel.

"(10) At the conclusion of the investigation, the person in charge of the investigation shall inform the law enforcement officer under investigation, in writing, of the investigative findings and any recommendation for disciplinary action that the person intends to make.

"(11) A law enforcement officer who brought before a disciplinary hearing shall be provided access to all transcripts, records, written statements, written reports and analyses and video tapes pertinent to the case that:

"(A) contain exculpatory information;

"(B) are intended to support any disciplinary action; or

"(C) are to be introduced in the disciplinary hearing.

"(b) OPPORTUNITY FOR A HEARING.—The States shall give due consideration to proposals which ensure that, except in a case of summary punishment or emergency suspension described in subsection (d), if an investigation of a law enforcement officer results in a recommendation of disciplinary action, the law enforcement agency shall notify the law enforcement officer that the officer is entitled to a hearing on the issues by a hearing officer or board.

"(2)(A) Subject to subparagraph (B), a State shall determine the composition of any such disciplinary hearing board and the procedures for a disciplinary hearing.

"(B) A disciplinary hearing board that includes employees of the law enforcement agency of which the officer who is the subject of the hearing is a member shall include at least one law enforcement officer of equal or lesser rank to the officer who is the subject of the hearing.

"(d) SUMMARY PUNISHMENT AND EMERGENCY SUSPENSION.—(1) This section does not preclude a State from providing for summary punishment of emergency suspension for misconduct by a law enforcement officer.

"(2) An emergency suspension shall not affect or infringe on the health benefits of a law enforcement officer.

"(e) NOTICE OF DISCIPLINARY ACTION.—When disciplinary action is to be taken against a law enforcement officer, the officer shall be notified of the action and the reasons therefor a reasonable time before the action takes effect.

"(f) RETALIATION FOR EXERCISING RIGHTS.—There shall be no penalty or threat of penalty against a law enforcement officer for

the exercise of the officer's rights under this section.

"(g) OTHER REMEDIES NOT IMPAIRED.—(1) Nothing in this section shall be construed to impair any other legal remedy that a law enforcement officer has with respect to any rights under this section.

"(2) A law enforcement officer may waive any of the rights guaranteed by this section.

"(h) APPLICATION OF SECTION.—This section does not apply in the case of—

"(1) an investigation of criminal conduct by a law enforcement officer; or

"(2) a nondisciplinary action taken in good faith on the basis of a law enforcement officer's employment-related performance.

"(i) DEFINITIONS.—For the purposes of this section—

"(1) the term 'disciplinary action' means the suspension, demotion, reduction in pay or other employment benefits, dismissal, transfer, or similar action taken against a law enforcement officer as punishment for misconduct;

"(2) the term 'emergency suspension' means temporary action imposed by the head of the law enforcement agency when that official determines that the action is in the best interests of the public;

"(3) the term 'summary punishment' means punishment imposed for a minor violation of a law enforcement agency's rules and regulations that does not result in disciplinary action;

"(4) the term 'law enforcement agency' means a public agency charged by law with the duty to investigate crimes or apprehend or hold in custody persons charged with or convicted of crimes; and

"(5) the term 'law enforcement officer' means a full-time police officer, sheriff, or correctional officer of a law enforcement agency.

"(j) PROHIBITION OF ADVERSE MATERIAL IN OFFICER'S FILE.—A law enforcement agency shall not insert any adverse material into the file of any law enforcement officer unless the officer has had an opportunity to review and comment in writing on the adverse material.

"(k) DISCLOSURE OF PERSONAL ASSETS.—A law enforcement officer shall not be required or requested to disclose any item of the officer's personal property, income, assets, sources of income, debt, personal or domestic expenditures (including those of any member of the officer's household), unless

"(1) the information is necessary in investigating a violation of any Federal, State, or local law, rule, or regulation with respect to the performance of official duties; or

"(2) such disclosure is required by Federal, State, or local law.

"(l) ENFORCEMENT OF PROTECTIONS FOR LAW ENFORCEMENT OFFICERS.—(1) A State may provide rights for law enforcement officers that are substantially similar to the rights afforded under this section.

"(m) STATES' RIGHTS.—This section does not preempt State law or collective bargaining agreements or discussions during the collective bargaining process that provide rights for law enforcement officers that are substantially similar to the rights afforded by this section.".

AMENDMENT NO. 487

Strike title XXIII.

AMENDMENT NO. 488

Strike title VIII.

AMENDMENT NO. 489

Strike title IX.

AMENDMENT NO. 490

Strike title XXII.

AMENDMENT NO. 491

At the appropriate place in the bill, add the following:

SECTION 1. PROHIBITION OF UNSOLICITED SEXUALLY ORIENTED ADVERTISEMENTS AND OTHER MATTERS.

Chapter 83 of title 18, United States Code, is amended by adding the following section:

"§ 1735A. Prohibition of unsolicited sexually oriented advertisements and other matters

"(a) Any person who—

"(1) for himself, or by his agents or assigns, knowingly uses the mails for the mailing, carriage in the mails or delivery of—

"(A) any unsolicited sexually oriented advertisement; or

"(B) any unsolicited obscene, lewd, lascivious, indecent, filthy, or vile article, matter, thing, device, or substance;

to any individual or group of individuals; or

"(2) violates any regulation of the postal service issued pursuant to subsection (e), shall be imprisoned not more than 5 years, or fined not more than $100,000, or both for the first offense, and shall be imprisoned not more than 10 years, or fined not more than $200,000, or both, for any second or subsequent offense.

"(b) Whenever, on the basis of any information available to it, the Postal Service believes that a violation of this section has occurred, the Postal Service shall inform the Attorney General. The Attorney General may commence a civil action to recover a civil penalty not to exceed $100,000. Any such action shall be brought in the district court of the United States within the jurisdiction of which the advertisement or other mail matter involved shall have been sent or received.

"(c) All criminal fines or civil penalties collected under this section shall be paid into the Treasury of the United States.

"(d) For purposes of this section, 'sexually oriented advertisement' means any advertisement that depicts, in actual or simulated form, or explicitly describes, in a predominantly sexual context, human genitalia, any act of natural or unnatural sexual intercourse, any act of sadism or masochism, or any other erotic subject directly related to the foregoing. Material otherwise within the definition of this subsection shall be deemed not to constitute a sexually oriented advertisement if it constitutes only a small and insignificant part of the whole of a single catalog, book, periodical, or other work the remainder of which is not primarily devoted to sexual matters.

"(e) The Postal Service shall prescribe such regulations as may be necessary to carry out this section.".

SEC. 2. AMENDMENT TO RICO.

Paragraph (1) of section 1961 of title 18, United States Code, is amended by inserting after "section 1513 (relating to retaliating against a witness, victim, or an informant)" the following: ", section 1735A (relating to mailing of obscene matter or sexually oriented advertising)".

AMENDMENT NO. 492

At the appropriate place in the bill, add the following:

That chapter 11 of title 18, United States Code, is amended by—

(1) inserting between sections 219 and 223, the following new section:

"§ 220. Contingency fees in lobbying

"(a)(1) It shall be unlawful for any person to make, with intent to influence, any oral or written communication on behalf of any other person other than the United States to any department, agency, court, House of Congress, or commission of the United States, for compensation if such compensation has knowingly been made dependent—

"(A) upon any action of Congress, including but not limited to actions of either the House of Representatives or the Senate, or any committee or member thereof, or the passage or defeat of any proposed legislation;

"(B) upon the securing of an award, or upon the denial of an award, of a contract or grant by establishment of the Federal Government; or

"(C) upon the securing, or upon the denial, of any Federal financial assistance or any other Federal contract or grant.

"(2) The provisions of paragraph (1) shall not apply in any case involving the collection of any amount owed on a debt or on a contract claim owed to a person by the Federal Government.

"(b) Any person who violates the provisions of this section shall be fined not more than $50,000 or imprisoned not more than two years, or both.

"(c) The Attorney General may bring a civil action in any United States district court, on behalf of the United States, against any person who engages in conduct prohibited by this section in lieu of or in addition to an action taken pursuant to subsection (b), and, upon proof of such conduct by a preponderance of the evidence, may recover twice the amount of any proceeds obtained by that person due to such conduct. Such civil action shall be barred unless the action is commenced within six years after the later of (1) the date on which the prohibited conduct occurred, or (2) the date on which the United States became or reasonably should have become aware that the prohibited conduct had occurred."; and

(2) amending the table of sections by striking out the item between the item relating to section 219 and the item relating to section 224 and inserting in lieu thereof the following:

"220. Contingency fees in lobbying.".

SEC. 2. This Act and the amendments made by this Act shall become effective on the date of enactment of this Act and shall apply to any contract entered into on or after such date of enactment.

AMENDMENT NO. 493

At the appropriate place in the bill, add the following:

That Chapter 11 of Title 18, United States Code, is amended by—

(1) inserting between sections 219 and 223, the following new section:

"SECTION 220. CONTINGENCY FEES IN LOBBYING

"(a)(1) It shall be unlawful for any person to make, with intent to influence, any oral or written communication on behalf of any person other than the United States, to any department, agency, court, House of Congress, or commission of the United States, for compensation if such compensation has knowingly been made dependent upon—

"(A) any action of Congress, including, but not limited to actions of either the House of Representatives or the Senate, or any committee or member thereof, or the passage or defeat of any legislation;

"(B) the securing, or the denial, of an award, grant, or cooperative agreement by establishment of the Federal Government; or

"(C) the securing, or denial, of an award, of any Federal financial assistance or any other Federal contract, grant, or cooperative agreement.

"(2) The provisions of paragraph (1) shall not apply in any case involving the collection of any amount owed on a debt or on a contract claim owed to a person by the Federal Government.

"(3) The provisions of paragraph (1) shall not apply in any case in which a person has employed or retained a bona fide employee or established commercial or selling agency, to solicit or obtain business on a continuing basis, under an understanding or agreement for an established commission, percentage, brokerage, or fee comparable to customary fees for similar services related to commercial business under the circumstances described in either subparagraphs (B) or (C).

"(b) Any person who violates the provisions of this section shall be fined not more than $50,000 or imprisoned not more than 2 years, or both.

"(c)(1) The Attorney General may bring a civil action in any United States district court, on behalf of the United States against any person who engages in conduct prohibited by this section in lieu of or in addition to an action taken pursuant to subsection (b), and, upon proof of such conduct by a preponderance of the evidence, may recover twice the amount of any proceeds obtained by that person due to such conduct. Such civil action shall be barred unless the action commenced within six years after the later of (1) the date on which the prohibited conduct occurred, or (2) the date on which the United States became or reasonably should have become aware that the prohibited conduct had occurred." and

(2) amending the table of sections by striking out the item between the items relating to section 219 and the item relating to section 244 and inserting in lieu thereof the following:

"220. Contingency fees in lobbying.".

SEC. 2. This Act and the amendments made by this Act shall become effective on the date of enactment of this Act and shall apply to any contract, grant or cooperative agreement entered into on or after such date of enactment.

AMENDMENT NO. 494

Following the last word in title I, insert the following:

"§ 3598. Appointment of counsel

"(a) REPRESENTATION OF INDIGENT DEFENDANTS.—Notwithstanding any other provision of law, this section shall govern the appointment of counsel for any defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, for an offense against the United States, where the defendant is or becomes financially unable to obtain adequate representation. Such a defendant shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in section 3599(b) of this title has occurred.

"(b) REPRESENTATION BEFORE FINALITY OF JUDGMENT.—A defendant within the scope of this section shall have counsel appointed for trial representation as provided in section 3005 of this title. At least one counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel.

"(c) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the Government shall promptly notify the district court that imposed the sentence. Within ten days of receipt of such notice, the district court shall proceed to make a determination whether the defendant is eligible under this section for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order: (1) appointing one or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel; (2) finding, after a hearing if necessary, that the defendant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or (3) denying the appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation. Counsel appointed pursuant to this subsection shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(d) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under this section, at least one counsel appointed for trial representation must have been admitted to the bar for at least five years and have at least three years of experience in the trial of felony cases in the federal district courts. If new counsel is appointed after judgment, at least one counsel so appointed must have been admitted to the bar for at least five years and have at least three years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration of the seriousness of the penalty and the nature of the litigation.

"(e) APPLICABILITY OF CRIMINAL JUSTICE ACT.—Except as otherwise provided in this section, the provisions of section 3006A of this title shall apply to appointments under this section.

"(f) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28, United States Code, in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"§ 3599. Collateral attack on judgment imposing sentence of death

"(a) TIME FOR MAKING SECTION 2255 MOTION.—In a case in which sentence of death has been imposed, and the judgment has become final as described in section 3598(c) of this title, a motion in the case under section 2255 of title 28, United States Code, must be filed within ninety days of the issuance of the order relating to appointment of counsel under section 3598(c) of this title. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding sixty days. A motion described in this section shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

"(b) STAY OF EXECUTION.—The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28, United States Code. The stay shall run continuously following imposition of the sentence, and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28, United States Code, within the time specified in subsection (a), or fails to make a timely application for court of appeals review following the denial of such motion by a district court; or

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, United States Code, the motion under that section is denied and (A) the time for filing a petition for certiorari has expired and no petition has been filed; (B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or (C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of his decision, the defendant waives the right to file a motion under section 2255 of title 28, United States Code.

"(c) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim was (A) the result of governmental action in violation of the Constitution or laws of the United States; (B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or (C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.";

COCHRAN AMENDMENT NO. 495

(Ordered to lie on the table.)

Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the end of the bill, add the following:

AMENDMENT NO. 495

TITLE —DRUG SUPPLY REDUCTION

Subtitle A—Interdiction Systems Improvements

SEC. 01. SHORT TITLE FOR SUBTITLE A.

This subtitle may be cited as the "Order to Land and To Bring To Act of 1991."

SEC. 02. SANCTIONS FOR FAILURE TO LAND OR TO BRING TO.

(a) Chapter 109 of title 18 of the United States Code, is amended by adding at the end thereof the following new section:

"§ 2237. Order to land or bring to

"(a)(1) In the enforcement of the laws of the United States relating to controlled substances, as that term is defined in the Controlled Substances Act, or relating to money laundering (sections 1956–57 of this title), it shall be unlawful for the pilot, operator, or person in charge of any aircraft which has crossed the border of the United States, or

any aircraft subject to the jurisdiction of the United States operating outside the United States, to refuse to obey the order of an authorized Federal law enforcement officer to land.

"(2) The Administrator of the Federal Aviation Administration and the Commissioner of Customs, upon consultation with the Attorney General, shall prescribe regulations governing the means by which an order to land may be communicated to the pilot, operator, or person in charge of an aircraft by Federal law enforcement officers.

"(3) This section does not limit in any way the preexisting authority of a customs officer under section 581 of the Tariff Act of 1930 or any other provision of law enforced or administered by the Customs Service, or the preexisting authority of any Federal law enforcement officer under any law of the United States to order an aircraft to land or a vessel to bring to.

"(b) It is unlawful for any master, operator, or person in charge of a vessel of the United States or a vessel subject to the jurisdiction of the United States to fail to bring to that vessel on being ordered to do so by a Federal law enforcement officer authorized to issue such an order.

"(c) Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under this section may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or the Secretary's designee.

"(d) For purposes of this section:—

"(1) a "vessel of the United States" or a "vessel subject to the jurisdiction of the United States" has the meaning set forth in the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) an aircraft "subject to the jurisdiction of the United States" includes— "(A) an aircraft located over the United States or the customs waters of the United States;

"(B) an aircraft located in the airspace of a foreign nation, where that nation consents to the enforcement of United States law by the United States; and

"(C) over the high seas, an aircraft without nationality, an aircraft of United States registry, or an aircraft registered in a foreign nation where the nation of registry has consented or waived objection to the enforcement of United States law by the United States;

"(3) the term "bring to" means to cause a vessel to slow or come to a stop to facilitate a law enforcement boarding by adjusting the course and speed of the vessel to account for the weather conditions and sea state; and

"(4) "Federal law enforcement officer" has the meaning set forth in section 115 of this title.

"(e) A person who intentionally violates the provisions of this section shall be subject to—

"(1) imprisonment for not more than two years; and

"(2) a fine as provided in this title.

"(f) Any vessel or aircraft that is used in a violation of this section may be seized and forfeited. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this section; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose. Any vessel or aircraft that is used in a violation of this section is also liable in rem for any fine or civil penalty imposed under this section.".

(b) CONFORMING AMENDMENT.—The analysis at the beginning of chapter 109 of title 18, United States Code, is amended by adding at the end the following:

"2237. Order to land or to bring to.".

SEC. 03. FAA REVOCATION AUTHORITY.

(a) Section 501(e) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401(e)) is amended by adding at the end the following:

"(3)(A) The registration of an aircraft shall be immediately revoked upon the failure of the operator of an aircraft to follow the order of a Federal law enforcement officer to land an aircraft, as provided in section 2237 of title 18 of the United States Code. The Administrator shall notify forthwith the owner of the aircraft that the owner of the aircraft no longer holds United States registration for that aircraft.

"(B) The Administrator shall establish procedures for the owner of the aircraft to show cause—

(i) why the registration was not revoked, as a matter of law, by operation of subparagraph (A) of this subsection (3); or

(ii) why circumstances existed pursuant to which the Administrator should determine that, notwithstanding subparagraph (A), it would be in the public interest to issue a new certificate of registration to the owner to be effective concurrent with the revocation occasioned by operation of subparagraph (A).".

(b) Section 609 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1429(e)) is amended by adding at the end the following new subsection (d):

"(d)(1) The Administrator shall issue an order revoking the airman certificate of any person if the Administrator finds that (A) such person, while acting as the operator of an aircraft, failed to follow the order of a law enforcement officer to land the aircraft as provided in section 2237 of title 18 of the United States Code, and (B) that such person knew or had reason to know that he had been ordered to land the aircraft.

"(2) If the Administrator determines that extenuating circumstances existed, such as safety of flight, which justified a deviation by the airman from the order to land, the provisions of paragraph (1) of this subsection shall not apply.

"(3) The provisions of subsection (c)(3) of this section shall apply to any revocation of the airman certificate of any person for failing to follow the order of a Federal law enforcement officer to land an aircraft.".

SEC. 04. COAST GUARD AIR INTERDICTION AUTHORITY.

(a) AIR INTERDICTION AUTHORITY.—Chapter 5 of title 14, United States Code, is amended by adding at the end the following new section:

"§ 96. Air interdiction authority

"The Coast Guard may issue orders and make inquiries, searches, seizures, and arrests with respect to violations of laws of the United States occurring aboard any aircraft subject to the jurisdiction of the United States over the high seas and waters over which the United States has jurisdiction. Any order issued under this section to land an aircraft shall be communicated pursuant to regulations promulgated pursuant to section 2237 of title 18, United States Code.".

(b) CONFORMING AMENDMENT.—The analysis of chapter 5 of such title is amended by adding at the end the following:

"96. Air interdiction authority."

SEC. 05. COAST GUARD CIVIL PENALTY PROVISIONS.

(a) CIVIL PENALTY.—Chapter 17 of title 14, United States Code, is amended by adding the following new section:

"§ 667. Civil penalty for failure to comply with a lawful boarding or order to land

"(a) The master, operator or person in charge of a vessel or the pilot or operator of an aircraft who intentionally fails to comply with an order of a Coast Guard commissioned officer, warrant officer, or petty officer relating to the boarding of a vessel or landing of an aircraft in violation of section 2237 of title 18, United States Code, or section 96 of title 14, United States Code, is liable to the United States Government for a civil penalty of not more than $25,000, which may be assessed by the Secretary after notice and opportunity to be heard.

"(b) The master, operator or person in charge of a vessel or the pilot or operator of an aircraft who negligently fails to comply with an order of a Coast Guard commissoned officer, warrant officer, or petty officer relating to the boarding of a vessel or landing of an aircraft in violation of section 2237 of title 18, United States Code, or section 96 of title 14, United States Code, is liable to the United States Government for a civil penalty of not more than $5,000, which may be assessed by the Secretary after notice and opportunity to be heard.

"(c) Any vessel or aircraft used in violation of section 2237 of title 18, United States Code, or section 96 of title 14, United States Code, is also liable in rem for the criminal or civil penalty assessed under this section.".

"(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 666 the following:

"667. Civil penalty for failure to comply with a lawful boarding or order to land.".

SEC. 06. CUSTOMS ORDERS.

Section 581 of the Tariff Act of 1930, as amended (19 U.S.C. 1581) is further amended by adding a paragraph (i) to read as follows:

"(i) As used in this section, the term "authorized place" includes—

"(1) with respect to a vehicle, any location in a foreign country at which United States Customs Officers are permitted to conduct inspections, examinations, or searches;

"(2) with respect to aircraft to which this section applies by virtue of section 644 of this Act (19 U.S.C. 1644), or regulations issued thereunder, or section 2237 of title 18 of the United States Code, any location outside of the United States, including a foreign country at which United States Customs Officers are permitted to conduct inspections, examinations, or searches.".

SEC. 07. CUSTOMS CIVIL PENALTY PROVISIONS.

(a) The Tariff Act of 1930, as amended, is further amended by adding a new section 591 (19 U.S.C. 1591) as follows:

"§ 591. Civil penalty for failure to obey an order to land or to bring to

"(a) The pilot or operator of an aircraft who intentionally fails to comply with an order of an officer of the customs relating to the landing of an aircraft in violation of section 1581 of this title, or of section 2237 of title 18 of the United States Code, is subject

to a civil penalty of not more than $25,000 which may be assessed by the appropriate customs officer.

"(b) The pilot or operator of an aircraft who negligently fails to comply with an order of an officer of the customs relating to the landing of an aircraft in violation of section 1581 of this title, or of section 2237 of title 18 of the United States Code, is subject to a civil penalty of not more than $5,000, which may be assessed by the appropriate customs officer.".

Subtitle B—New Coast Guard Authorities

SEC. 11. SHORT TITLE FOR SUBTITLE B.

This subtitle may be cited as the "Coast Guard Assistance Act of 1991."

SEC. 12. INFORMATION EXCHANGE AND ASSISTANCE.

Section 142 of title 14, United States Code is amended—

(a) by inserting "(a)" at the beginning of the text, the words "and international organizations" after "with foreign governments", and the words "maritime law enforcement, maritime environmental protection, and" after "matters dealing with".

(b) by adding a new subsection "(b)" as follows:

"(b) the Coast Guard may, when so requested by the Secretary of State, utilize its personnel and facilities to assist any foreign government or international organization to perform any activity for which such personnel and facilities are specially qualified.".

SEC. 13. ASSISTANCE TO FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS.

(a) IN GENERAL.—Section 149 of title 14, United States Code is amended to read as follows:

"§ 149. Assistance to foreign governments and international organizations

"The President may upon application from the foreign governments or international organizations concerned, and whenever in his discretion the public interest renders such a course advisable, utilize officers and enlisted members of the Coast Guard to assist foreign governments or international organizations in matters concerning which the Coast Guard may be of assistance. Utilization of members may include the detail of such members. Arrangements may be made by the Secretary with countries to which such officers are enlisted members are detailed to perform functions under this section, for reimbursement to the United States or other sharing of the cost of performing such functions. While so detailed, such officers and enlisted members shall receive the pay and allowances to which they are entitled in the Coast Guard and shall be allowed the same credit for all service while so detailed, as if serving with the Coast Guard.".

(b) CONFORMING AMENDMENT.—The analysis at the beginning of chapter 7 of title 14, United States Code, is amended by replacing the wording following "149" with:

"Assistance to foreign governments and international organizations."

SEC. 14. AMENDMENT TO THE MANSFIELD AMENDMENT TO PERMIT MARITIME LAW ENFORCEMENT OPERATIONS IN ARCHIPELAGIC WATERS.

Section 2291(c)(4) of title 22, United States Code, is amended by inserting the words ", and archipelagic waters" after the words "territorial sea".

THURMOND (AND HATCH) AMENDMENT NO. 496

(Ordered to lie on the table.)

Mr. THURMOND (for himself and Mr. HATCH) submitted an amendment intended to be proposed by them to the bill S. 1241, supra, as follows:

Strike page 222 line 18 through page 223 line 24 and insert the following:

SEC. 2301. SEARCHES AND SEIZURES PURSUANT TO AN INVALID WARRANT.

(a) IN GENERAL.—Chapter 109 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 2237. Evidence obtained by invalid warrant

"(a) Evidence which is obtained as a result of search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the Fourth Amendment to the Constitution of the United States, if the search or seizure was carried out in reasonable reliance on a warrant issued by a detached and neutral magistrate ultimately found to be invalid, unless—

"(1) the judicial officer in issuing the warrant was materially misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth;

"(2) the judicial officer provided approval of the warrant without exercising a neutral and detached review of the application for the warrant;

"(3) the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or

"(4) the warrant is so facially deficient that the executing officers could not reasonably presume it to be valid.

"(b) This section shall not be construed to require or authorize the exclusion of evidence in any proceeding.".

(b) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 109 of title 18, United States Code, is amended by adding at the end thereof the following:

HATCH AMENDMENT NO. 497

(Ordered to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place, insert the following:

TITLE —SEXUAL VIOLENCE AND CHILD ABUSE

SEC. 801. ADMISSIBILITY OF EVIDENCE OF SIMILAR CRIMES IN SEXUAL ASSAULT AND CHILD MOLESTATION CASES.

The Federal Rules of Evidence are amended by adding after rule 412 the following new rules:

"Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

"(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

"(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

"(d) For purposes of this rule and rule 415, 'offense of sexual assault' means a crime under Federal law or the law of a State that involved—

"(1) any conduct proscribed by chapter 109A of title 18, United States Code;

"(2) contact, without consent, between any part of a defendant's body or an object and the genitals or anus of another person;

"(3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

"(4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

"(5) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).

"Rule 414. Evidence of Similar Crimes in Child Molestation Cases

"(a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

"(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

"(d) For purposes of this rule and rule 415, "child" means a person below the age of fourteen, and "offense of child molestation" means a crime under Federal law or the law of a State that involved—

"(1) any conduct proscribed by chapter 109A of title 18, United States Code, that was committed in relation to a child;

"(2) any conduct proscribed by chapter 110 of title 18, United States Code;

"(3) contact between any part of the defendant's body or an object and the genitals or anus of a child;

"(4) contact between the genitals or anus of the defendant and any part of the body of a child;

"(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or

"(6) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(5).

"Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation

"(a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in rule 413 and rule 414 of these rules.

"(b) A party who intends to offer evidence under this rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

"(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.".

GRAHAM AMENDMENT NO. 498

(Ordered to lie on the table.)

Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

In the appropriate place insert the following:

The Congress finds that:

An adequately supported Federal judiciary is essential to the enforcement of law and order in the United States, and

Section 331 of Title 28 provides in pertinent part that the Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation, and

In 1990, in response to the recommendations of the Judicial Conference for additional judgeships, Congress enacted legislation creating 85 additional judgeships with an effective date of December 1, 1990, and

Only one of these vacancies has been filled, and

During the current administration, it has taken an average of 502 days from the time a judgeship becomes vacant until such vacancy is filled, and

The enactment of legislation providing additional funding for the investigation and prosecution facets of the criminal justice system has a direct and positive impact on the needs and workload of the Judiciary, which is already severely overloaded with criminal cases, and

Recommendations by the Judicial Conference for the filling of judicial vacancies are currently made on the basis of historical data alone, and

The General Accounting Office, pursuant to the 1988 Anti-Drug Abuse Act, has developed a computer model that measures the potential effect of fiscal increases on one or more parts of the criminal justice system on the Judiciary, and

The General Accounting Office has established that an increase in the resources allocated to the investigative and prosecutorial parts of the criminal justice system, brings about an increase in the number of criminal cases filed, which in turn adds to the need for additional judgeships, and

The allocation of resources to portions of the federal criminal justice system other than the Judiciary contributes to the need for additional judgeships that cannot be anticipated by the use of historical data alone, and

The use of historical data alone, because of its inability to project the need for additional judgeships attributable to the increase in criminal caseload adds to the delay in meeting the needs of the Judiciary.

Therefore, it is the Sense of the Senate:

It is the sense of the Senate that the Judicial Conference should be encouraged to make its recommendations to Congress for additional judgeships utilizing historical data and a workload estimate model designed to anticipate an increase in criminal filings resulting from increased funding in one or more components of the federal criminal justice system, and to take into account the time expended in the appointive and confirmation process.

THURMOND AMENDMENT NO. 499

(Ordered to lie on the table.)

Mr. THURMOND submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

Section 2254 of title 28 United States Code, as amended by this Act, is further amended by adding a new subsection (i) reading as follows:

"(i) An adjudication of a claim in state proceedings is full and fair in the sense of this section, unless the adjudication was conducted in a manner inconsistent with the procedural requirements of federal law that are applicable to state proceedings was contrary to or involved an arbitrary or unreasonable interpretation or application of clearly established federal law, or involved an arbitrary or unreasonable determination of the facts in light of the evidence presented."

SPECTER AMENDMENT NO. 500

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place, add the following new section:

SEC. 01. GRANTS FOR TRAINING IN LITERACY AND MARKETABLE JOB SKILLS FOR INMATES IN STATE PRISONS.

There are hereby authorized to be appropriated annually $5,000,000 to the National Institute of Corrections of the Federal Bureau of Prisons to make grants to States for educational programs for criminal offenders in State correctional institutions, including—

(1) academic programs for—

(A) basic education with special emphasis on reading, writing, vocabulary, and arithmetic; and

(B) secondary school credit programs;

(2) vocational training programs;

(3) training for teaching personnel specializing in corrections education; and

(4) guidance and counseling programs.

The Institute shall set aside a portion of this appropriation for a grant to track, document, and evaluate the overall correctional education initiative.

GLENN AMENDMENT NO. 501

Mr. GLENN proposed an amendment to the bill S. 1241, supra, as follows:

On page 167, between lines 8 and 9, insert the following:

SEC. 1402. USE OF PREFABRICATED MODULAR HOUSING.

Not later than 20 days after the date of enactment of this Act, and at least 60 days prior to the completion of planning or award of a contract for the acquisition or construction of facilities for any light or medium security prison, the Bureau of Prisons shall prepare and submit to Congress a report that—

(1) assesses the feasibility and cost-effectiveness of using prefabricated modular units such as Quonset huts for permanent or temporary housing and other facilities in light, medium, and maximum security prisons;

(2) describes the types of facilities for which the use of such units is feasible and cost-effective and identifies plans by the Bureau to use such units at particular prisons; and

(3) describes the types of facilities for which the use of such units is considered not to be feasible or cost-effective and identifies plans for particular prisons for which the use of such units either has not been considered or has been rejected for the reason that their use would not be feasible or cost-effective or for any other reason.

KOHL AMENDMENT NO. 502

(Ordered to lie on the table.)

Mr. KOHL submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place, insert the following:

SEC. . NATIONAL CHILD ABUSER REGISTRATION ACT OF 1991.

(a) SHORT TITLE.—This section may be cited as the "National Child Abuser Registration Act of 1991".

(b) DEFINITIONS.—For the purposes of this section—

(1) the term "child" means a person who is a child for the purposes of the criminal child abuse law of a State'

(2) the term "child abuse" means the physical, psychological, or emotional injuring, sexual abuse or exploitation, neglectful treatment, or maltreatment of a child by any person in violation of the criminal child abuse law of a State;

(3) the term "child abuser information" means the following facts concerning a person who has violated the criminal child abuse laws of a State:

(A) name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence, and a brief description of the crime or crimes committed by the offender; and

(B) any other information that the Federal Bureau of Investigation or the National Crime Information Center determines may be useful in identifying child abusers;

(4) the term "criminal child abuse law of a State" means the law of a state that establishes criminal penalties for the commission of child abuse by a parent or other family member of a child or by any other person;

(5) the term "National Crime Information Center" means the division of the Federal Bureau of Investigation that serves as a computerized information source on wanted criminals, persons named in arrest warrants, runaways, missing children, and stolen property for use by Federal, State, and local law enforcement authorities; and

(6) the term "State" means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

(c) FINDINGS.—The Congress finds that—

(1) disturbing increases have occurred in recent years in the number of reported cases of child abuse and neglect, some involving persons previously convicted of crimes of child abuse;

(2) many children who run away from home, who fall prey to pornography and prostitution, who suffer from a dependency on alcohol and drugs, and who become juvenile offenders, have been victims of child abuse;

(3) research has shown that child abuse tends to repeat itself, and some parents who abuse their children were once victims themselves;

(4) in recognition of the increased cases of child abuse, several States have established agencies to receive and maintain data relating to cases of child abuse;

(5) currently there exists no centralized national source through which a law enforcement agency can obtain data relating to persons who have committed crimes of child abuse;

(6) partly bacause of the lack of available and accurate information at the national level, persons who have committed acts of child abuse in one State have been able to go to another State to commit the crime again, in some cases in a position of authority over children; and

(7) the Nation cannot afford to ignore the importance of preventing child abuse.

(d) PURPOSES.—The purposes of this section are—

(1) to establish a national system through which current, accurate information concerning persons who commit crimes of child abuse can be obtained from a centralized source;

(2) to assist in the prevention of second incidents of child abuse by providing information about persons who have been convicted of a crime of child abuse to organizations whose primary concern is that of child welfare and care; and

(3) to understand the problem of child abuse in the United States by providing statistical and informational data to the Department of Justice, the National Center on Child Abuse and Neglect, the Congress, and other interested parties.

(e) REPORTING BY THE STATES.—

(1) IN GENERAL.—A State which reports the convictions of named individuals to the Federal Bureau of Investigation shall include all convictions for child abuse as defined in this section.

(2) GUIDELINES.—The Attorney General shall establish guidelines for the reporting of child abuser information, including procedures for carrying out the purposes of this section.

(f) STATE COMPLIANCE.—

(1) COMPLIANCE DATE.—Each State shall have 3 years from the date of the enactment of this section in which to implement the provisions of this section.

(2) INELIGIBILITY FOR FUNDS.—The allocation of funds under section 506 of the Omnibus Crime Control and Safe Streets Act (42 U.S.C. 3756) received by a state not complying with the provisions of this section 3 years after the date of enactment of this section shall be reduced by 25 percent and the unallocated funds shall be reallocated to the States in compliance with this section.

DOLE (AND OTHERS) AMENDMENT NO. 503

Mr. DOLE (for himself, Mr. METZENBAUM, Mr. MITCHELL, Mr. DOMENICI, Mr. KOHL, Mr. THURMOND, and Mr. GORE) proposed an amendment to the bill S. 1241, supra, as follows:

On page 236, strike line 7 and all that follows through the end of the bill and insert the following:

TITLE XXVII—FELON FIREARM PURCHASE PREVENTION

SEC. 2701. FEDERAL FIREARMS LICENSEE REQUIRED TO CONDUCT CRIMINAL BACKGROUND CHECK BEFORE TRANSFER OF FIREARM TO NONLICENSEE.

(a) INTERIM PROVISION.—Section 922 of title 18, United States Code, as amended by section 702 of this Act, is amended by adding at the end of the following new subsection:

"(u)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the date that the Attorney General certifies that the national instant criminal background check system is in compliance with section 2702(d)(1) of the Violent Crime Control Act of 1991 except as provided as paragraph (2) and (3) of section 2702(d) of such Act); it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

"(II) verified the identification of the transferee by examining the identification document presented; and

"(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 5 business days (as defined by days in which State offices are open) have elapsed from the date the transferee furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit that—

"(I) allows the transferee to possess a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(D) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(E) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because of the inability of the transferor to communicate with the chief law enforcement officer because of the remote location and absence of telecommunications facilities in the remote location of the licensed premises.

"(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether the transferee has a criminal record or whether there is any other legal impediment to the transferee's receiving a handgun, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

"(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(4) The chief law enforcement officer of the place of residence of a prospective transferee of a handgun, at the request of a person who alleges the person requires access to a handgun becuase of a threat to the life of the person or a member of the household of the person, shall immediately meet with the person and forthwith sign a written statement described in paragraph (1)(B) unless the officer has clear and convincing evidence that no threat was made to the life of the person or any member of the household of the person.

"(5) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall immediately communicate all information the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(6) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(7)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction.

"(B)(i) Unless the chief law enforcement officer to whom notice is provided under paragraph (1)(A)(i)(III) determines that a transaction would violate Federal, State, or local law, the officer shall, within 5 days after the date the transferee made such statement, destroy any record containing information derived from such statement.

"(ii) Information conveyed to a chief law enforcement officer under paragraph (1)(A)(i)(III)—

"(I) shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

"(II) shall not be used for any purpose other than to carry out this subsection.

"(8) A chief law enforcement officer shall not be liable in an action at law for damages for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section.

"(9) For purposes of this subsection, the term 'chief law enforcement officer' means

the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

"(10) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers and to the public.".

(b) PERMANENT PROVISION.—Section 922 of title 18, United States Code, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(v)(1) Beginning on the date that the Attorney General certifies that the national instant criminal background check system is in compliance with section 2702(d)(1) of the Violent Crime Control Act of 1991 (except as provided in paragraphs (2) and (3) of section 2702(d) of such Act), a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm from the business inventory of the licensee to any other person who is not such a licensee, unless—

"(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 2703 of the Felon Firearm Purchase Prevention Act of 1991; and

"(B) the system notifies the licensee that the system has not located any record that demonstrates that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section.

"(2) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

"(A) such other person presents to the licensee a valid permit or license, issued by the State or political subdivision thereof in which the transfer is to occur, that authorizes such other person to purchase, possess, or carry a firearm;

"(B) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(C) on application of the transferor, the Secretary has certified that compliance with paragraph (1)(A) is impracticable because of the inability of the transferor to communicate with the national instant criminal background check system because of the remote location and absence of telecomunication facilities in the remote location of the licenses premises.

"(3) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n), and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

"(4) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n), the Secretary may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under this section, and may impose on the licensee a civil fine of not more than $5,000.

"(5) A State employee responsible for providing information to the national instant criminal background check system shall not be liable in an action at law for damages for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section.".

(c) PENALTY.—Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking "(2) or (3)"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates section 922 (u) or (v) shall be fined not more than $1,000, imprisoned for not more than 1 year, or both.".

SEC. 2702. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

(a) ESTABLISHMENT OF SYSTEM.—The Attorney General of the United States shall establish a national instant criminal background check system that any licensee may contact for information on whether receipt of a firearm by a prospective transferee thereof would violate section 922(g) or (n) of title 18, United States Code.

(b) EXPEDITED ACTION BY THE ATTORNEY GENERAL.—The Attorney General shall expedite—

(1) the incorporation of State criminal history records into the Federal criminal records system maintained by the Federal Bureau of Investigation;

(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(c) PROVISION OF STATE CRIMINAL RECORDS TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM—(1) Not later than 6 months after the date of enactment of this Act, the Attorney General shall—

(A) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems will communicate with the national system;

(B) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on line capacity basis to the national system;

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of the State timetable that the State achieve, by the end of 5 years after the date of enactment of this Act, at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within the last 5 years and continue to maintain such a system.

(d) NATIONAL SYSTEM CERTIFICATION.—(1) On or after the date that is 30 months after the date of enactment of this Act, the Attorney General shall certify that—

(A) the national system has achieved at least 80 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an entry of activity within the last 5 years on a national average baseis; and

(B) the States are in compliance with the timetable established pursuant to subsection (c).

(2) If on the date of certification in paragraph (1), a State that is not in compliance with the timetable established pursuant to subsection (c), the provision of section 922(u) of title 18, United States Code, as added by section 2701, shall remain in effect in such State. The Attorney General shall certify if a State subject to the provisions of section 922(u) under the preceding sentence achieves compliance with its timetable after the date of certification in paragraph (1) and section 922(u) of title 18, United States Code, as added by section 2701, shall not apply to such State.

(3) Six years after the date of enactment of this Act, the Attorney General shall certify whether or not a State is in compliance with subsection (c)(2) and if the State is not in compliance, the provisions of section 922(u) of title 18, United States Code, shall be in effect. The Attorney General shall certify if a State subject to the provisions of section 922(u) under the preceding sentence achieves compliance with the standards in subsection (c)(2) and section 922(u) of title 18, United States Code, as added by section 2701, shall not apply to such State.

(e) NOTIFICATION OF LICENSEES.—On establishment of the system under this section, the Attorney General shall notify each licensee of the existence and purpose of the system and the means to be used to contact the system.

(f) ADMINISTRATIVE PROVISIONS.—

(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION.—Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate section 922(g) or (n) of title 18, United States Code as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

(2) OTHER AUTHORITY.—The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION.—If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate section 922 (g) or (n) of title 18, United States Code, the transferee may request the Attorney General to provide such other person with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The transferee may submit to the Attorney General information that to correct, clarify, or supplement records of the system with respect to the transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to such the transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

(h) REGULATIONS.—After 90 days notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(i) PROHIBITIONS RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS.—No department, agency, officer, or employee of the United States may—

(1) require that any record or portion thereof maintained by the system estab-

lished under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited by section 922 (g) or (n) of title 18, United States Code, from receiving a firearm.

(j) DEFINITIONS.—As used in this section:

(1) LICENSEE.—The term "licensee" means a licensed importer, licensed manufacturer, or licensed dealer under section 923 of title 18, United States Code.

(2) OTHER TERMS.—The terms "firearm", "licensed importer", "licensed manufacturer", and "licensed dealer" have the meanings stated in section 921(a) (3), (9), (10), and (11), respectively, of title 18, United States Code.

SEC. 2703. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS.

(a) IMPROVEMENTS IN STATE RECORDS.—

(1) USE OF FORMULA GRANTS.—Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(1) in paragraph (2) by striking "and" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; and "; and

(3) by adding at the end the following new paragraph:

"(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the records required by the Attorney General under section 3 of the Felon Firearm Purchase Prevention Act of 1991 with the Attorney General for the purpose of implementing the Felon Firearm Purchase Prevention Act of 1991.".

(2) ADDITIONAL FUNDING.—

(A) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS.—The Attorney General shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

(i) for the creation of a computerized criminal history record system or improvement of an existing system;

(ii) to improve accessibility to the national instant criminal background system; and

(iii) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subparagraph (A) a total of $100,000,000 for fiscal year 1992 and all fiscal years thereafter.

(b) WITHHOLDING STATE FUNDS.—Effective on the date of enactment of this Act the Attorney General may reduce by up to 50 percent the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 of a State that is not in compliance with the timetable established for such State under section 2702(c).

(c) WITHHOLDING OF DEPARTMENT OF JUSTICE FUNDS.—If the Attorney General does not certify the national instant criminal background check system pursuant to section 2702(d)(1) by—

(1) 30 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal beginning in the calendar year that is 30 months after the date of enactment of this Act shall be reduced by 5 percent on a monthly basis; and

(2) 42 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal beginning in the calendar year that is 42 months after the date of enactment of this Act shall be reduced by 10 percent on a monthly basis.

(d) If, beginning 5 years after the date of enactment of this Act the Attorney General certifies all states are in compliance with section 2702(c) all State laws requiring a waiting period for the purchase of firearms are preempted by the provisions of this title.

MITCHELL AMENDMENT NO. 504

Mr. MITCHELL proposed an amendment to amendment No. 503 proposed by Mr. DOLE (and others) to the bill S. 1241, supra, as follows:

On page 18 of the amendment strike all after line 13.

BIDEN AMENDMENT NO. 505

Mr. FOWLER (for Mr. BIDEN) proposed an amendment to the bill S. 1241, supra, as follows:

At the appropriate place, insert the following:

SEC. . CONSUMER PROTECTION AGAINST CREDIT CARD FRAUD ACT OF 1991.

(a) SHORT TITLE.—This section may be cited as the "Consumer Protection Against Credit Card Fraud Act of 1991".

(b) FRAUD AND RELATED ACTIVITY IN CONNECTION WITH ACCESS DEVICES.—Section 1029 of title 18, United States Code, is amended—

(1) in subsection (a) by inserting after paragraph (4) the following new paragraphs:

"(5) knowingly and with intent to defraud effects transactions, with one or more access devices issued to another person or persons, to receive payment or any other thing of value during any one-year period the aggregate value of which is equal to or greater than $1,000;

"(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of—

"(A) offering an access device; or

"(B) selling information regarding or an application to obtain an access device; or

"(7) without the authorization of the credit card system member or its agent, knowingly and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, one or more evidences or records of transactions made by an access device;".

(c) TECHNICAL AMENDMENTS.—Section 1029 of title 18, United States Code, as amended by subsection (b), is amended—

(1) in subsection (a) by striking "or" at the end of paragraph (3);

(2) in subsection (c)(1) by striking "(a)(2) or (a)(3)" and inserting "(a) (2), (3), (5), (6), or (7)"; and

(3) in subsection (e) by—

(A) striking "and" at the end of paragraph (5);

(B) adding "and" at the end of paragraph (6); and

(C) adding at the end thereof the following new paragraph:

"(7) the term 'credit card system member' means a financial institution or other entity that is a member of a credit card system, including an entity, whether affiliated with or identical to the credit card issuer, that is the sole member of a credit card system.".

PRYOR AMENDMENT NO. 506

Mr. FOWLER (for Mr. PRYOR) proposed an amendment to the bill S. 1241, supra, as follows:

(a) Section 2511(1) of title 18 is amended—

(1) by striking "or" at the end of paragraph (c);

(2) by inserting "or" after the semicolon at the end of paragraph (d); and

(3) by adding the following new paragraph:

"(e)(i) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by Sections 2511(2)(a)(ii), 2511(b)-(c), 2511(e), 2516, and 2518 of this subchapter, (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a criminal investigation, (iv) with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation;"

(b) Section 2515 of title 18 is amended by adding at the end the following new paragraph:

"This section shall not apply to the admission into evidence of the contents of a wire or oral communication, or evidence derived therefrom, which has been disclosed in violation of Section 2511(1)(e)."

KENNEDY (AND HATCH) AMENDMENT NO. 507

Mr. FOWLER (for Mr. KENNEDY, for himself and Mr. HATCH) proposed an amendment to the bill S. 1241, supra, as follows:

At the appropriate place, insert the following:

SEC. . THEFTS OF MAJOR ART WORKS.

(a) OFFENSE.—Chapter 31 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 668. Theft of a major art work

"(a) Whoever steals or obtains by fraud any object of cultural heritage held in a museum shall be fined under this title, imprisoned not more than the maximum term of imprisonment for a class C felony, or both.

"(b) A museum which exhibits to the public or holds in storage any stolen object of cultural heritage knowing such object is stolen shall be fined under this title, imprisoned not more than the maximum term of imprisonment for a class C felony, or both.

"(c) Notwithstanding section 3282 of this title, the statute of limitations for an offense under this section shall be 20 years.

"(d) The property of a person convicted of an offense under this section shall be subject to criminal forfeiture under section 982 of this title.

"(e) For purposes of this section—

"(1) The term 'museum' means an organized and permanent institution, essentially educational or aesthetic in purpose with professional staff, which owns and utilizes tangible objects, cares for them, and exhibits them to the public on some regularly scheduled period.

"(2) The term 'stolen object of cultural heritage' means a stolen object reported to law enforcement authorities as stolen and registered with the International Founda-

tion for Art Research, Smith International Adjustors, or any equivalent registry.".

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 31 of title 18, United States Code, is amended by adding at the end thereof the following:

"668. Theft of a major art work.

GRAHAM AMENDMENT NO. 508

Mr. FOWLER (for Mr. GRAHAM) proposed an amendment to the bill S. 1241, supra, as follows:

In the appropriate place insert the following:

The Congress finds that:

An adequately supported Federal judiciary is essential to the enforcement of law and order in the United States, and

Section 331 of Title 28 provides in pertinent part that the Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation, and

In 1990, in response to the recommendations of the Judicial Conference for additional judgeships, Congress enacted legislation creating 85 additional judgeships with an effective date of December 1, 1990, and

Only one of these vacancies has been filled, and

During the current administration, it has taken an average of 502 days from the time a judgeship becomes vacant until such vacancy is filled, and

The enactment of legislation providing additional funding for the investigation and prosecution facets of the criminal justice system has a direct and positive impact on the needs and workload of the Judiciary, which is already severely overloaded with criminal cases, and

Recommendations by the Judicial Conference for the filling of judicial vacancies are currently made on the basis of historical data alone, and

The General Accounting Office, pursuant to the 1988 Anti-Drug Abuse Act, has developed a computer model that measures the potential effect of fiscal increases on one or more parts of the criminal justice system on the Judiciary, and

The General Accounting Office has established that an increase in the resources allocated to the investigative and prosecutorial parts of the criminal justice system, brings about an increase in the number of criminal cases filed, which in turn adds to the need for additional judgeships, and

The allocation of resources to portions of the federal criminal justice system other than the Judiciary contributes to the need for additional judgeships that cannot be anticipated by the use of historical data alone, and

The use of historical data alone, because of its inability to project the need for additional judgeships attributable to the increase in criminal caseload adds to the delay in meeting the needs of the Judiciary.

Therefore, it is the Sense of the Senate:

It is the sense of the Senate that the Judicial Conference should be encouraged to make its recommendations to Congress for additional judgeships utilizing historical data and a workload estimate model designed to anticipate an increase in criminal filings resulting from increased funding in one or more components of the federal criminal justice system, and to take into account the time expended in the appointive and confirmation process.

FOWLER AMENDMENT NO. 509

Mr. FOWLER proposed an amendment to the bill S. 1241, supra, as follows:

On page 100, line 16, please insert the following language as new subsection (2):

"Such training programs shall include a drug education program which:

"(a) trains Police Corps participants concerning drug and alcohol abuse education and prevention;

"(b) develops a framework for their collaboration with the local school systems and community resources to reduce the availability and demand for drugs by teaching students to recognize and resist pressures to experiment with drugs and alcohol. This may specifically include instruction about:

"(i) understanding the consequences of drug abuse;

"(ii) resistance techniques;

"(iii) managing stress without taking drugs;

"(iv) positive alternatives to drug abuse behavior;

"(v) self-esteem building activities;

"(vi) resistance to peer pressure and gang pressure;

"(vii) decision-making and risk taking;

"(viii) interpersonal and communications skills.".

On page 106, line 9, after the period insert the following: "This section authorizes sums as may be necessary to implement this program.".

STEVENS AMENDMENT NO. 510

Mr. STEVENS proposed an amendment to the bill S. 1241, supra, as follows:

On page 150 on line 21 immediately before the period insert the following: unless such receipt is for lawful sporting purposes.

ROTH AMENDMENT NO. 511

Mr. BIDEN (for Mr. ROTH) proposed an amendment to the bill S. 1241, supra, as follows:

On page 114, strike all on lines 22 through 26.

WOFFORD AMENDMENT NO. 512

(Ordered to lie on the table.)

Mr. WOFFORD submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the end of the bill, add the following:

TITLE —ENVIRONMENTAL COMPLIANCE

SEC. 01. ENVIRONMENTAL COMPLIANCE.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 33 the following new chapter:

"CHAPTER 34—ENVIRONMENTAL COMPLIANCE

"731. Environmental compliance audit.

"732. Definition.

"§ 731. Environmental compliance audit

"(a) IN GENERAL.—A court of the United States—

"(1) shall, when sentencing an organization for an environmental offense that is a felony; and

"(2) may, when sentencing an organization for a misdemeanor environmental offense,

require that the organization pay for an environmental compliance audit.

"(b) APPOINTMENT OF INDEPENDENT EXPERT.—The court shall appoint an independent expert—

"(1) with no prior involvement in the management of the organization sentenced to conduct an environmental compliance audit under this section; and

"(2) who has demonstrated abilities to properly conduct such audits.

"(c) CONTENTS OF COMPLIANCE AUDIT.—(1) An environmental compliance audit shall—

"(A) identify all causes of and factors relating to the offense; and

"(B) recommend specific measures that should be taken to prevent a recurrence of those causes and factors and avoid potential environmental offenses.

"(2) An environmental compliance audit shall not recommend measures under paragraph (1)(B) that would require the violation of an environmental statute, regulation, or permit.

"(d) COURT-ORDERED IMPLEMENTATION OF COMPLIANCE AUDIT.—The court shall order the defentant to implement the appropriate recommendations of the environmental compliance audit.

"(e) ADDITIONAL STANDING TO RAISE FAILURE TO IMPLEMENT COMPLIANCE AUDIT; BURDEN OF PROOF.—(1) The prosecutor, auditor, any governmental agency, or any private individual may present evidence to the court that a defendant has failed to fully implement an environmental compliance audit.

"(2) when evidence of failure to implement an environmental compliance audit is presented pursuant to paragraph (1), the court shall consider all relevant evidence and, of the court determines that the defendant has not fully implemented the environmental compliance audit, order appropriate sanctions.

"§ 732. Definition

"For the purposes of this chapter, the term 'environmental offense' means a criminal violation of—

"(1) the Clean Air Act (42 U.S.C. 7401 et seq.);

"(2) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) commonly known as the Clean Water Act);

"(3) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

GRAHAM AMENDMENT NO. 514

Mr. GRAHAM proposed an amendment, which was subsequently modified, to the bill S. 1241, supra, as follows:

At the appropriate place, insert the following:

SEC. . RACIAL AND ETHNIC BIAS STUDY GRANTS.

(a) FINDINGS.—The Congress finds that—

(1) equality under law is tested most profoundly by whether a legal system tolerates race playing a role in the criminal justice system; and

(2) States should examine their criminal justice systems in order to ensure that racial and ethnic bias has no part in such criminal justice systems.

(b) AUTHORIZATION OF GRANT PROGRAM.—

(1) IN GENERAL.—The Attorney General, through the Bureau of Justice Assistance, is authorized to make grants to states that have established by State law or by the court of last resort a plan for analyzing the role of race in that State's criminal justice system. Such plan shall include recommendations designed to correct any find-

ings that racial and ethnic bias plays such a role.

(2) CRITERIA FOR GRANTS.—Grants under this subsection shall be awarded based upon criteria established by the Attorney General. In establishing the criteria, the Attorney General shall take into consideration the population of the respective States, the racial and ethnic composition of the population of the States, and the crime rates of the States.

(3) REPORTS BY STATES.—Recipients of grants under this subsection shall report the findings and recommendations of studies funded by grants under this subsection to the Congress within reasonable time limits established by the Attorney General.

(4) REIMBURSEMENT OF STATES.—Grants may be made to reimburse States for work started prior to the date of enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 to carry out the provisions of this section.

THURMOND AMENDMENT NO. 513

Mr. THURMOND proposed an amendment to the bill S. 1241, supra, as follows:

At the appropriate place in the bill, add the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Marshals Association Establishment Act".

SEC. 2. ESTABLISHMENT AND PURPOSE OF ASSOCIATION.

(a) ESTABLISHMENT.—There is established the United States Marshals Association (hereinafter in this Act referred to as the "Association"). The Association is a charitable and nonprofit corporation and is not an agency or establishment of the United States.

(b) PURPOSES.—The purposes of the Association are—

(1) to elevate and strengthen public knowledge of law enforcement in general, and the United States Marshals Service in particular;

(2) to promote the exchange of information among private and public institutions and individuals about law enforcement and justice systems issues;

(3) to organize symposia, studies, and research in carrying out paragraphs (1) and (2);

(4) to study the history of law enforcement;

(5) to produce, sell, and distribute educational materials on law enforcement and justice systems issues;

(6) to accept and administer private gifts or property for the benefit of, or in connection with, the activities and services of the United States Marshals Service; and

(7) to promote law enforcement.

SEC. 3. BOARD OF DIRECTORS OF THE ASSOCIATION.

(a) ESTABLISHMENT AND MEMBERSHIP.—The Association shall have a governing Board of Directors (hereinafter referred to in this Act as the "Board"), which shall consist of not less than 3 nor more than 20 Directors, each of whom shall be a United States citizen and be knowledgeable or experienced in law enforcement matters. The Director of the United States Marshals Service shall be a nonvoting member of the Board, ex officio. Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(b) APPOINTMENT AND TERMS.—

(1) INITIAL APPOINTMENT.—The Directors of the Board first appointed shall be appointed by the United States Marshals Association, a non-profit corporation in existence before the enactment of this Act, which is organized under the laws of the State of Virginia.

(2) SUBSEQUENT APPOINTMENT.—The Directors of the Board appointed after the appointment of Directors under paragraph (1) shall be appointed in the manner provided in the bylaws of the Association.

(3) ADVICE OF DIRECTOR.—Any Director of the Board may be appointed with the advice of the Director of the United States Marshals Service (hereinafter referred to in this Act as the "Director".

(4) TERMS.—The Directors of the Board shall be appointed for terms of 4 years. A vacancy on the Board shall be filled in the manner in which the original appointment was made. No individual may serve for more than 2 consecutive terms as a Director of the Board.

(c) CHAIR.—The chair of the Board shall be elected by the Board from its members to a 2-year term.

(d) QUORUM.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(e) MEETINGS.—The Board shall meet at the call of the chair at least twice each year. If a Director of the Board misses 3 consecutive regularly scheduled meetings, that individual may be removed from the Board as provided in the bylaws of the Association, and that vacancy may be filled in accordance with subsection (b).

(f) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary travel and subsistence expenses incurred by them in the performance of the duties of the Association.

(g) GENERAL POWERS.—(1) The Board may complete the organization of the Association by—

(A) appointing officers and employees;

(B) adopting a constitution and bylaws consistent with the purposes of the Association and the provisions of this Act; and

(C) carrying out such other actions as may be necessary to carry out this Act.

(2) The following limitations apply with respect to the appointment of officers and employees of the Association:

(A) Officers and employees may not be appointed until the Association has sufficient funds to pay them for their services. Officers and employees of the Association shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the maximum rate of pay payable under section 5376 of title 5. United States Code, for a position classified above grade GS-15 of the General Schedule.

(B) The first officer or employee appointed by the Board shall be the Secretary of the Board who—

(i) shall serve, at the direction of the Board, as its chief operating officer, and

(ii) shall be knowledgeable and experienced in matters relating to law enforcement.

(h) ADVISORY COUNCIL.—The chair of Board may appoint an Advisory Council of up to 15 members to advise the Association on its activities under this Act. Members of the Advisory Council have no vote in matters before the Association.

SEC. 4. MEMBERSHIP.

(a) ELIGIBILITY.—Eligibility for membership in the Association shall be limited to persons and organizations demonstrating support of the stated purpose, goals, and functions of the Association. Categories of membership shall be as follows:

(1) Regular member, which shall be limited to individuals actively or formerly employed in the United States Marshals Service.

(2) Associate member, which shall be limited to individuals who are qualified by training or experience in Federal, State, local, or foreign law enforcement.

(3) Honorary member, which shall be limited to individuals who have an outstanding record of service in the public or private sector.

(4) Corporate member, which shall be limited to nongovernmental public, private, or nonprofit organizations which support the purposes of the United States Marshals Association.

(5) Sponsoring member, which shall be limited to Federal or State government entities.

(b) APPLICATION.—Persons may apply or be nominated for membership in the Association. Any such application shall be made in writing on the form provided by the Association.

(c) SPONSORSHIP.—Applicants or nominees for membership in any category except that of sponsoring member must be proposed by a regular member. Acceptance of applicants or nominees for membership shall be determined by a majority vote of the Board.

(d) DUES FOR MEMBERS.—Membership dues shall be established by the Board. Dues must accompany a prospective member's application. No dues shall be required in the case of honorary members or sponsoring members.

(e) VOTING.—A member may vote in matters for which the vote of the Association is required, and may serve on the Board.

(f) SUSPENSION OR EXPULSION OF MEMBERS.—A member may be suspended or expelled for nonpayment of dues in arrears for at least 60 days, for good cause, or for other reasons by a vote of two-thirds of the Board in accordance with procedures prescribed in Robert's Rules of Order. No member who has been suspended or expelled from the Association may be readmitted to membership for a period of 1 year, and readmission thereafter shall require the consent of two-thirds of the Board.

SEC. 5. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.

(a) IN GENERAL.—The Association—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States;

(3) shall have its principal offices in the State of Virginia or such other place as may be determined by the Board; and

(4) shall at all times maintain a designated agent authorized to accept service of process for the Association.

The service of process upon the agent required under paragraph (4), or the mailing of such process to the business address of such agent, shall be deemed to be service upon the Association.

(b) SEAL.—The Association may use the seal, insignia, or badge of the United States Marshals Service, and other materials unique to the United States Marshals Service, only with the express written permission of the Director.

(c) POWERS.—To carry out its purposes under section 2, the Association shall have,

in addition to the powers otherwise given it under this Act, the usual powers of a corporation acting as a trustee in the State of Virginia or wherever else the Association is incorporated. The Association shall have the power—

(1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(2) to acquire by purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom;

(4) to borrow money and issue bonds, debentures, or other debt instruments;

(5) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the Directors of the Board shall not be personally liable, except for gross negligence;

(6) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(7) to do any and all acts necessary and proper to carry out the purposes of the Association.

A gift, devise, or bequest may be accepted by the Association even though it is encumbered, restricted, or subject to the beneficial interest of private persons if any current or future interest therein is for the benefit of the Association.

SEC. 6. ADMINISTRATIVE SERVICES AND SUPPORT.

The Director may provide personnel, facilities, and other administrative services to the Association, including reimbursement of expenses under section 3, not to exceed the then current Federal Government per diem rates, for a period of up to 5 years from the date of the enactment of this Act, and may accept reimbursement therefor, to be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services.

SEC. 7. VOLUNTEER STATUS.

The Director may, notwithstanding section 1342 of title 31, United States Code, accept voluntary services of the Association in the performance of the functions of the Association under this Act.

SEC. 8. RESTRICTIONS.

(a) FINANCIAL INTERESTS.—No part of the income or assets of the Association shall inure to any member or officer of the Association or Director of the Board or be distributed to any such person. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers or the Association or reimbursement for actual necessary expenses in amounts approved by the Board.

(b) PROHIBITION ON LOANS.—The Association shall not make any loan to any Director of the Board or to any officer or employee of the Association.

(c) PROHIBITION ON STOCK.—The Association shall have no power to issue any shares of stock or to declare or pay any dividends.

SEC. 9. AUDITS, REPORT REQUIREMENTS, AND PETITION OF ATTORNEY GENERAL FOR EQUITABLE RELIEF.

(a) AUDITS.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law," approved August 30, 1964 (Public Law 88-504, 36 U.S.C. 1101 through 1103), the Association shall be treated as a private corporation established under Federal law.

(b) REPORT.—The Association shall, as soon as practicable after the end of each fiscal year, transmit to the Congress a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments.

(c) RELIEF WITH RESPECT TO CERTAIN ASSOCIATION ACTS OR FAILURE TO ACT.—If the Association—

(1) engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with its purposes set forth in section 2(b); or

(2) refuses, fails, or neglects to discharge its obligations under this Act, or threatens to do so, the Attorney General of the United States may petition the appropriate court for such equitable relief as may be necessary or appropriate.

SEC. 10. UNITED STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, acts, or omissions of the Association, nor shall the full faith and credit of the United States extend to any obligation of the Association.

SEC. 11. NONDISCRIMINATION.

(a) EMPLOYMENT PRACTICES.—Notwithstanding section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b)) or section 101(5)(B) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(5)(B)), the Association and any agent of the Association shall be considered an employer for purposes of title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990 if the Association is engaged in an industry affecting commerce and meets the minimum employee requirements set forth in those Acts.

(b) MEMBERSHIP PRACTICES.—

(1) PROHIBITED PRACTICES.—It shall be unlawful for the Association, on the basis of the race, color, religion, sex, national origin, age, or disability, of an individual, to—

(A) fail or refuse to accept the individual into membership;

(B) expel the individual from membership;

(C) suspend the membership of the individual; or

(D) discriminate against the individual with respect to any of the benefits or obligations of membership.

(2) ENFORCEMENT.—

(A) RIGHT OF ACTION.—Any person may bring a civil action to enforce paragraph (1) in any appropriate United States district court. Any such action may be dismissed for just cause.

(B) INJUNCTIVE RELIEF.—In any civil action brought under this paragraph, the court may grant as relief any permanent or temporary injunction, temporary restraining order, or other equitable relief as the court determines appropriate.

SEC. 12. ACQUISITION OF ASSETS AND LIABILITIES OF EXISITING ASSOCIATION.

The Association may acquire the assets of the United States Marshals Association, a nonprofit organization organized under the laws of the State of Virginia before the enactment of this Act.

SEC. 13. AMENDMENT AND REPEAL.

The Congress expressly reserves the right to repeal or amend this Act at any time.

INTELLIGENCE AUTHORIZATION ACT

SMITH AMENDMENT NO. 515

Mr. SYMMS (for Mr. SMITH) proposed an amendment to the bill (S. 1325) to authorize appropriations for fiscal year 1991 for intelligence and intelligence-related activities of the U.S. Government, the Intelligence Community staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, as follows:

At the appropriate place in the reported bill insert the following new section:

SEC. . FURNISHING OF INTELLIGENCE INFORMATION TO THE SENATE AND HOUSE SELECT COMMITTEES ON INTELLIGENCE.

(a) FURNISHING OF SPECIFIC INFORMATION.—In accordance with Section 501 of the National Security Act of 1947, the head of any department or agency of the United States involved in any intelligence activities which may pertain to United States military personnel listed as prisoner, missing, or unaccounted for in military actions shall furnish any information or documents in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the Senate or House Select Committee on Intelligence.

(b) ACCESS BY COMMITTEES AND MEMBERS OF CONGRESS.—In accordance with Senate Resolution 400, 94th Congress and House Resolution 658, 95th Congress, the Senate and House Select Committees on Intelligence shall, upon request and under such regulations as the committees have prescribed to protect the classification of such information, make any information described in subsection (a) available to any other committee or any other Member of Congress and appropriately cleared staff.

NOTICES OF HEARINGS

SUBCOMMITTEE ON DOMESTIC AND FOREIGN MARKETING AND PRODUCT PROMOTION

Mr. LEAHY. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry Subcommittee on Domestic and Foreign Marketing and Product Promotion will hold a hearing on the importation of subsidized grains from Sweden. The hearing will be held on Monday, July 8, 1991, at 2 p.m. in SR-332. Senator KENT CONRAD will preside.

For further information please contact Kent Hall at 224-2043.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for my colleagues and the public that 2 days of hearings have been scheduled before the Committee on Energy and Natural Resources.

The purpose of the hearing is to receive testimony on S. 1351, the "Department of Energy Science and Technology Partnership Act."

The hearings will take place on Wednesday, July 24, 1991, and Thursday, July 25, 1991. Both days of hearings will take place at 2 p.m. in room SD-366 of the Dirksen Senate Office Building, First and C Streets, NE., Washington, DC.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony

for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510, Attention: Mary Louise Wagner.

For further information, please contact Mary Louise Wagner of the committee staff at 202/224-7569.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Friday, June 28, 1991, at 9:30 a.m., for a hearing on "Poultry Safety: Consumers at Risk."

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

ADDITIONAL STATEMENTS

TRIBUTE TO DR. CHARLES E. ANDREWS

• Mr. KERREY. Mr. President, on Sunday, June 30, Dr. Charles E. Andrews will retire as the fifth chancellor of the University of Nebraska Medical Center [UNMC]. Characteristically, he declined an offer by the board of regents for a retirement dinner; he didn't have a prepared speech for the final board of regents meeting.

I have known Charlie Andrews for some 8 years now. He is an inspiration and he is my friend.

In 1983, we lured him away from West Virginia University Medical Center. He brought with him heart, soul, vision, wit, and an enduring twinkle in his eyes. He showed us foresight, conviction and a courage to stand by his convictions.

UNMC is today in large part of reflection of his expertise, commitment and boundless energy.

He was instrumental in establishing the Organ and Bone Marrow Transplant Program at the Medical Center. Today the liver transplant and bone marrow transplant programs are among the most active in the country.

During his 8 years at UNMC, he has placed a renewed emphasis on research, especially cancer research. This has led to major advances at the Eppley Institute for Research in Cancer and Allied Diseases, which has been designated as 1 of 15 laboratory cancer research centers in the United States by the National Cancer Institute. It is the only such facility located in Nebraska or the six adjacent States.

Under his direction, UNMC opened the University Geriatric Center in 1989, a major step forward in meeting the needs of an aging population. UNMC hopes this center will eventually become the first geriatric hospital in the country.

His contributions have not, however, been limited to Omaha. Charlie Andrews provided the impetus for the innovative use of communications technology to address health care needs in rural Nebraska. Today, we teach nursing skills through distance learning programs and we provide information, consultation and support to physicians and health care professionals in rural communities through his efforts. The Rural Health Education Network and the Rural Health Opportunities Program have put the State on the cutting edge of education and patient care in less populated areas.

The UNMC College of Nursing experienced growth under his stewardship as nursing programs for Scottsbluff and Kearney were added to the existing programs in Omaha and Lincoln. A doctoral program was added to the nursing curriculum in 1990 and the Niedfelt Nursing Research Center was opened in Omaha.

In 1988, he took the lead in making UNMC one of the first Omaha employers to establish a smoke and tobacco free work environment. Under his leadership, UNMC became the first employer to affiliate with a health maintenance organization. He also instituted a general education diploma for UNMC employees.

Under his direction, UNMC has been active in establishing joint programs with other Omaha area hospitals, thus avoiding costly duplication of services.

When Charlie Andrews announced his retirement last January, the Omaha World Herald ran an editorial which highlighted some of his accomplishments. I ask that a copy of that editorial be included in the RECORD.

I, of course, wish that Charlie Andrews had chosen not to retire, that he would continue to move UNMC ahead. But, I understand his decision. I and all Nebraska will miss his leadership at UNMC but I expect to continue to benefit from his counsel and recommendations.

The editorial follows:

DR. ANDREWS A STRONG LEADER

Dr. Charles E. Andrews has been a strong leader and a good manager as chancellor of the University of Nebraska Medical Center. He set high goals for the medical center, then worked hard to achieve them.

Dr. Andrews will leave his post June 30 after seven years. He will leave behind a record of excellence in recruiting and retaining top-level doctors, researchers and teachers. Under his direction, the medical center excelled in research and service to the public.

The medical center's work in some fields, including research on liver diseases and cancer, came to be known internationally. The university is among the few institutions anywhere in the world to specialize in the use of monoclonal antibodies—synthetic substances—to treat pancreatic cancer.

Dr. Andrews is also entitled to credit for the success of UNMC's transplant programs, including the liver, solid organ and bone marrow programs. The medical center has attracted some of the transplantation field's top people to its staff.

He has also been the guiding force in the rural health education network. He has encouraged the recruiting of medical students who might be likely to return to rural areas to practice. And he has expanded the medical center's reach across Nebraska, creating the Rural Health Opportunities Program at Chadron State College and Wayne State College.

Peers call Dr. Andrews a man of vision who can be a fierce fighter for improvements. "He is willing to take chances," said Dr. Michael Sorrell, department chairman for internal medicine. "He has vision and courage."

Dr. Andrews was a sensible manager. His formula for success: Obtain the best facilities you can, recruit top faculty members and researchers and then let them go about their work.

In a recent interview, he said, "I think the medical center is well on its way to becoming a major Midwest health care, education and research center." As the medical center continues toward that goal, a large part of the credit goes to Dr. Charles E. Andrews.•

IRAQ's NEW THREAT TO WORLD PEACE

• Mr. McCAIN. Mr. President, the events that have taken place in Iraq today have proved that Iraq and Saddam Hussein are still a major threat to world peace. We must be careful about rushing into calls for military action, in Iraq or any part of the world. We must wait to learn the facts, and we must wait for President Bush to decide on a course of action and provide the leadership in this crisis that he has provided so consistently since coming to office. But, we are clearly in a crisis and we must clearly take suitable action.

The problem is Iraq's weapons of mass destruction. We have liberated Kuwait, we have destroyed Saddam Hussein's military dominance of the gulf region, and we have ended his ability to attack other nations successfully with conventional weapons. It is clear, however, that we underestimated Iraq's dedication to acquiring nuclear weapons, and there are growing indications that Iraq may also possess a much larger capability to deliver other weapons of mass destruction than we had previously hoped.

THE THREAT OF IRAQI NUCLEAR WEAPONS

In the case of nuclear weapons, the many experts who denied that Iraq was near the point that it could build a bomb, and who attacked this reason for military action in the gulf, have been proved conclusively wrong. Iraq admitted after the ceasefire that it had more than the 48 pounds of weapons grade uranium that most experts outside of the U.S. Government had dreamed of before the war. Where many such experts thought Iraq might not have enough material for a bomb, it became apparent that it clearly had enough fissile material for one weapon, and might well have enough for two.

A recent defector has made it clear that Iraq also had at least four secret nuclear facilities, one of which may well have been producing large amounts of additional material. If this source is right, and many intelligence experts believe that he is, Iraq has enough material to build 2 to 4 bombs, and a facility that could make several weapons a year even if we recover all of the weapons grade material that Iraq has declared to the United Nations and the International Agency for Atomic Energy.

We are not talking about theoretical threats or ones that depend on outside supplies of weapons material. We are talking about a massive national effort involving billions and billions of dollars which seems to involve 15 years of effort to acquire uranium from sources outside Iraq, work on three different methods of enrichment, and the development of processing and mining facilities in Iraq. We are talking about equipment, material, and technology that may be scattered over the entire country.

Further, we have no way to be certain what nuclear weapons designs Iraq has brought near to maturity, what level of enrichment it has achieved, or how far along it is with other critical components like nuclear weapons reflectors and neutron initiators. These technical factors determine how many weapons Iraq can build, how it can deliver them, and the yield of its weapons—which could range anywhere from around 5 kilotons to over 20 kilotons per weapon.

THE OTHER THREATS TO PEACE

These facts would be frightening enough, Mr. President, but they are only part of the story. Iraq's proliferation efforts also involve chemical weapons, biological weapons, missiles, and long range strike aircraft.

In the case of chemical weapons, Iraq admitted to the United Nations in April that it still had 9,420 chemical artillery rounds, 1,076 chemical bombs, and close to 1,000 tons of mustard and nerve gas. It did not, however, admit that it had persistent nerve gas and blood agents like cyanide gas. It claimed that something like one-third of its chemical stockpile might be buried under war damaged facilities that could not be fully inspected. It may well have understated its stocks of those chemical weapons it did declare, and some sources claim that Iraq dispersed many of its key equipment items and stocks for the production of chemical weapons before the United States began bombing.

In the case of biological weapons, Iraq has flatly denied the fact that it has such weapons. There is, however, virtually no doubt that it does have such weapons. There are indications that it may also have dispersed much of the equipment necessary to produce biological weapons, and there is no question that it retains all the required expertise and technology. I hardly need point out that these are ideal weapons for terrorism and covert action.

As for missiles, Iraq has admitted that it has regular Scuds, 50 modified longer range Hussein variants of the Scud, at least 30 chemical and 23 regular warheads for the Scud, and a substantial number of launchers—launchers that it can still manufacture. Iraq has not, however, said one word about the massive manufacturing and research facilities it established before the war, its stockpiles of missile components, and new missile types it has in development. It is not clear that we were able to destroy as many of these facilities as we once hoped, and there is again the possibility that substantial amounts of missile components and production and test equipment have been dispersed throughout the country.

Finally, we must not forget that the technical glamour of missiles in no way means they are Iraq's only weapons delivery system. It can use long range aircraft to carry far more tonnage than it can deliver with missiles, it has far more weapons that aircraft can deliver, and its aircraft have more range and far greater reliability. If Iraq does rush into nuclear bomb production, it may well have to use an aircraft to deliver such weapons for several years to come.

SADDAM'S SHELL GAME OF HORROR: ROOTING OUT THE TOOLS OF GENOCIDE

Given this background, it is clear that we cannot be satisfied with anything less that a comprehensive and continuing U.N. inspection of Iraq and the destruction of all of Iraq's major stockpiles and weapons production facilities. We cannot rely on half measures and half certainties. We cannot let Saddam win his shell game of horror.

We must explore every option in depriving Iraq of the ability to stockpile, manufacture, and deliver weapons of mass destruction. We must not tolerate any violation of the terms of the ceasefire, and any violation of Iraq's international agreements.

We must also face the fact that we can never be certain that our knowledge of Iraq's capabilities is complete unless inspection takes place on the ground. Deeply buried facilities can only be inspected by actual visits. Iraq has had months to hide material and equipment, has literally hundreds of military storage facilites, and much of this equipment is small and hard to detect.

If we are to root out this threat to world peace, it also will not be the task of the moment. It will take a long series of inspections, a major and well funded inspection force, and the ability to move rapidly throughout Iraq and inspect on a moment's notice. We must insist on such an effort before allowing Iraq to resume its exports of oil and before we lose the opportunity made possible by our military victory.

Finally, we must announce to the world that any nation or company that exports the technology and material for weapons of mass destruction, and/or missiles and attack aircraft, to Iraq is the enemy of peace. We must establish a regime of sanctions to punish such nations of the kind I have advocated in S. 309.—the Nonproliferation and Arms Transfer Control Act—now awaiting action by this body. We cannot deprive Iraq of the skilled technicians and expertise that it has gained in its search for genocide. Even when we have rooted out today's threat, we must be certain we have taken the steps to halt tomorrow's!•

WEST VIRGINIA STUDENT HAS WINNING PEACE ESSAY

• Mr. ROCKEFELLER. Mr. President, I rise today to inform my colleagues of the achievement of a citizen of West Virginia. Mellow Means, a ninth grader at Spring Hill Junior High in South Charleston, has won first place in a State-level competition for the 1990–91 National Peace Essay Contest, sponsored by the U.S. Institute of Peace.

The U.S. Institute of Peace, which was created by an act of Congress in 1984, sponsors the Peace Essay Contest annually in an effort to encourage serious contemplation of the basic issues of war and peace in our Nation's schools. This year students were called on to explore one instance when the U.S. Government made a significant contribution to the prevention or resolution of a violent international conflict.

In her submission, Mellow grappled with two crises that punctuated America's relations with the small nation of Cuba and the huge nation of the U.S.S.R. She explored the failure of military intervention evinced during the Bay of Pigs invasion. She tried to understand the tenuous line which separated negotiation from conflict and war from peace during those fateful days now known collectively as the Cuban missile crisis. In exploring the use of negotiations and military force, Mellow found that "in these two very different ways to resolve problems, that in this instance, the peaceful approach seemed to be the best."

In her research, Mellow learned that the Cuban missile crisis of October 1962 took this nation and the world to the brink of destruction. She recognized and argued for the value of negotiation and the importance of peace in 1962. Her explorations remind us all of the importance of peace today. I would like to congratulate Mellow on her prize. I would also like to thank her for her insight and her fitting reminder of the importance of peace for our times.

Mr. President, I ask that a full copy of Mellow's essay, "The Cuban Missile Crisis," be placed in the RECORD.

The essay follows:

THE CUBAN MISSILE CRISIS

Of the many disagreements and misunderstandings the United States have been involved with, I could not remember a potentially violent conflict that was resolved peacefully.

After researching and discussing many international topics, I chose the Cuban Missile Crisis and the events that led up to it.

I feel that this crisis best shows that there are two ways to solve International conflicts. One way is by military pressure, force or invasion. The other being sanctions, embargos, negotiations and even just the threat of military intervention, both of which were actually pursued in this confrontation.

There was political tension between the United States and Cuba in the late 1950's because after the Bastista dictatorship was overthrown and Fidel Castro was sworn in as Prime Minister, he took American assets and redistributed them. He also placed Communists in government positions. These actions alarmed the American people.

The Cubans had resentment for the United States because wealthy Cuban exiles, who had lost their land under the redistribution laws, raided Cuba trying to overthrow Fidel Castro and regain their wealth and land. During these bombing raids, American-made planes were being used by the exiles.

During the time of these strained relations, the Soviet deputy premiere visited Cuba. Russia signed a trade agreement with Cuba where the Soviet Union would buy sugar for the next five years and supply Cuba with oil, which the American oil companies refused to process.

Castro then ordered the seizure of Cuba's United States owned oil companies and the nationalization of these refineries. As a result, the United States withdrew all of its technicians from the oil fields, and in June of 1960, the United States House of Representatives passed a bill reducing the imports of Cuban sugar. This bill prompted Khruschev to announce that the Soviet Union would buy all of the sugar rejected by the United States of America. Khrushchev also said that he would provide military assistance to Cuba if necessary in the event of an invasion.

These events are what led to strained relations between Cuba and the United States and which finally prompted the United States in January of 1961 to stop buying Cuban sugar, to cut all exports from the United States and to break all diplomatic relations with Cuba.

It had become obvious that a clash between Cuba and the United States was approaching and in January, 1961, Castro ordered members of the American embassy staff to leave Cuba.

On January 1, 1961, Castro held a parade in Havana, many Russian tanks and weapons were in this parade. The Cuban secret service also stepped up its campaign against all anti-government revolutionaries. Also, a voluntary peoples militia was formed.

By the middle of March, practically everything about the invasion of the United States into Cuba, except its time and place, were public knowledge. This invasion, which was suppose to be organized and led by the "Cuban Revolutionary Council" in Miami, was the first conflict between the two countries. It was called the Bay of Pigs.

The plan for the invasion was to train 1,500 men, arm them, supply them with tanks and ships, and lead them into Cuba. They were to be greeted by the Cuban people who, according to American CIA information, wanted rid of Fidel Castro themselves.

The invasion finally began on April 15, 1961. B-52's with Cuban markings flew over the island bombing two Cuban airfields and military quarters. Castro, expecting the invasion would soon be under way, had hidden his military planes and placed decoy planes in view. The damage to the airforce was slight. Seven men were killed and forty-four injured in the attack. Throughout Cuba, police began to round up everyone even suspected of being anti-government. The thousands arrested included bishops, journalists and the underground, including 2,500 CIA agents. This completely took out of action all those who might have responded to the invasion and was a huge blow to its success.

On April 16, 1961, Kennedy secretly gave permission for the attacks to continue. The men in the group consisted of ex-soldiers in Batista's army, priests and ex-owners of more than 800,000 acres of Cuban land. These exiles, more than 1,500 men, along with two United States battleships and three freighters loaded with United States tanks and artillery and escorted by two Navy destroyers, started landing the morning of April 17, 1961. The landing sight, thought to be perfect, was a long and narrow bay on the southern central coast in a relatively hard-to-reach area surrounded by land and swamp. There were, however, three major down falls to this invasion. First, the place chosen by the invaders was one of Castro's favorite fishing spots and he knew every road and track way plus the local militia had been alerted by sentries who in turn informed an army battalion stationed nearby. Second, Cuba's airforce had not been destroyed. Fidel's airplanes led Cuba in heavy aerial bombing, which were important to his success in the Bay of Pigs. Third, the expected response of the Cuban people was not forthcoming. Those that would have been supportive of the invaders had been imprisoned when the bombing of the airfields began two days before. It soon became very clear that the invasion was doomed. By the 19th, the invaders were forced to concede defeat. Castro's forces captured 1,180 prisoners; 129 had been killed. The result of the failed invasion was a great victory for Fidel Castro and the Cuban revolution was for the first time publicly proclaimed a "Marxist-Leninist State". Castro also proclaimed there would be no more formal elections.

Because of the trade sanctions, Cuba became more and more dependent on the Soviet Union. Castro also still feared another invasion. So in July of 1962, Castro requested more military aid from Russia. The Russians agreed to supply Cuba with missile and nuclear weapons.

The United States learned of these missile sites through photographs from U.S. planes. Kennedy, concerned about the prospect of nuclear war missiles, announced that the United States would set up a naval blockade to prevent further Soviet ships into Cuba and demanded that all missiles be removed. This confrontation between the two countries was very much a nuclear war scare. Khrushchev finally agreed to dismantle the missiles if the United States would guarantee that it wouldn't participate in any more Cuban attacks. Finally on October 27, 1962, President Kennedy agreed to Khrushchev's terms and Khushchev agreed to remove the missles. A month later, Cuban blockades were removed. This, in my opinion, was the beginning of the U.S. Russian peace treaties to remove and limit the number of nuclear weapons between the two countries.

In my opinion, these conflicts show the contrasting differences between negotiations and military force. "The Cold War" between the United States and the Soviet Union very much threatened international peace at this point in time, and brought the world very close to nuclear destruction. I found that in these two very different ways to resolve problems, that in this instance, the peaceful approach seemed to be the best.

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MICRO-ENTERPRISE LOAN FUND

• Mr. GRASSLEY. Mr. Chairman, I am most pleased to be an original cosponsor of this bill by Senator BUMPERS. This micro-loan demonstration project will work perfectly with the micro-enterprise legislation I introduced on Wednesday. By providing mechanisms for startup finance of small businesses, this bill will enable many welfare-dependent women and other low-income individuals to become proud business owners.

S. 1395, my Micro-Enterprise Act, will enable prospective entrepreneurs to exclude this loan from the calculation of assets when calculating eligibility for public assistance. My bill also excludes income derived from the first year of the business operation from public assistance eligibility. This will enable budding entrepreneurs to reinvest receipts back into their business or to begin paying off the loan.

These two bills together not only will give participants the opportunity to get off welfare, but will also give them independence and a renewed sense of self-worth.

I look forward to working with Senator BUMPERS on this legislation in the Small Business Committee.•

HONORING THE BIG RED ONE

• Mrs. KASSEBAUM. Mr. President, on the Fourth of July I will have the honor of participating in the welcome home ceremonies for the Big Red One at Fort Riley, KS. As President Bush has said, this should be one of the best Fourth of July celebrations in recent years.

The 1st Infantry Division at Fort Riley has a long history that gives pride not only to Kansans but all Americans. Our tribute to the Big Red One's mission in the Persian Gulf builds further on its many honors, including D-day, Korea, and Vietnam.

I am proud to join with Senator DOLE in supporting this resolution, which ex-

presses the appreciation of the Senate and the American people for the commitment, sacrifice, and success of all the members of the Big Red One and their commanding general, Thomas Rhame, in their effort in the gulf.

The 1st Infantry Division had one of the toughest missions in the gulf war. The 12,000 men and women of the division from Kansas were sent to breach Iraq's defenses and were the first American unit to enter Iraq. They went up against Saddam Hussein's best forces, the elite Republican Guard, and successfully cleared a path into southern Iraq for other units.

The bravery and tenacity of the 1st Division was one of the essential keys to our success in the gulf war. As General Rhame has explained, the division pushed relentlessly both day and night, without giving the Iraqi soldiers a break, and defeated them resoundingly. The division's attack was unprecedented in terms of speed and distance. During their lightning strike, the 1st Division destroyed 388 Iraqi tanks, 400 armed personnel carriers, and took 11,400 Iraqi prisoners of war.

As a result of that great offensive action, the 1st Division was positioned for the historic mission of hosting the peace conference conducted by General Schwarzkopf—an honor truly befitting the role they played in the war.

The price of freedom and peace never comes cheaply. As we honor the 1st Division on the Fourth of July, our hearts will be with those families whose loved ones made the ultimate sacrifice in the gulf war. It is their valor and the valor of the entire 1st Division that has contributed to making our Armed Forces and our country the symbol of freedom and democracy to millions of people around the world.●

A TRIBUTE TO LINDA ALVARADO

● Mr. WIRTH. Mr. President, I am very pleased to report that major league baseball is on its way to Denver, CO. I am also pleased to recognize one of the many outstanding business leaders in Denver who is responsible for bringing major league baseball to Colorado, Ms. Linda Alvarado.

I have known Linda for a number of years. Like many people in Colorado, I have great admiration for her ability as a business and community leader. Linda has been involved in general contracting and construction, but her business talents have gone well beyond her own firm. Linda has long been recognized as a force in civic affairs, and her advice and perspective on important political and economic issues is valued throughout Colorado. She is now poised to blaze a new trail as a minority woman coowner of a major league baseball team.

I am pleased to recognize Linda Alvarado's considerable achievements, and ask that an article from the Rocky Mountain News describing Linda's contribution toward bringing major league baseball to Denver be printed in the RECORD.

The article follows:

[From the Rocky Mountain News, June 17, 1991]

ALVARADO ALREADY MAJOR LEAGUE

(By Hector Gutierrez)

The blue skies, the weather and all of Denver's quality-of-life attractions are what brought Linda Alvarado to the Mile High City.

Now add another attraction to the list and it will probably make Alvarado stay in Denver for good: Major League Baseball.

This time it won't be only for fun. Alvarado is a limited partner in the Colorado General Partnership for the team. Major league owners are expected to formally approve the franchise soon; the team would start play in 1993.

Alvarado has come far. She attended her first baseball game in 1960s at Chavez Ravine in Los Angeles. She began working in the development and construction business in the early 1970s.

It was something of a gamble for a Latino woman to enter the construction field in 1976. Alvarado's parents mortgaged their home so that she could start her business, a general contracting firm.

Alvarado Construction Inc. has hit it big since. "Thank God for parents," Alvarado said.

Among the firm's projects, Alvarado Construction has helped build the Colorado Convention Center, Concourse B at Stapleton International Airport and a nine-story building for U S West Communications in Inverness Park.

"I have to say this was nontraditional for women to be contemplating this," Alvarado said. "It took a period of time—years—to be developing credibility in an industry where there were simply not many women in ownership roles."

As a potential co-owner of a major league team, Alvarado takes yet another role in which very few minorities and women have been able to prosper.

It is no secret to her that minorities and women have had limited opportunities to get into the higher echelons of Major League Baseball organizations.

"Baseball has been a sport in which Hispanics have achieved great success," said Alvarado, who celebrates her 40th birthday tomorrow.

Still, Alvarado awaits for the word that will give Denver and Miami the go-ahead to be part of the National League.

She credits Mayor Federico Peña for trying to bring huge economic projects to the city in an attempt to get Denver out of its financial slump.

"I think his track record will show how, as a strong leader at a time when our economy was struggling, he was able to assemble business leaders and community leaders and citizens to work together on numerous endeavors," Alvarado said.

NEWSMAKER—LINDA ALVARADO

Born: June 18, 1951, in Albuquerque.

Occupation: President of Alvarado Construction Inc. and limited partner in the ownership of Denver's expansion baseball team.

Background: After graduating from college in California, she started in construction management in 1974 and later formed her own general contracting business.

Education: Bachelor's degree in behavioral science from Pomona College in California.

Personal: Married, three children.

Quote: "Over the years, Hispanic fans like me have enthusiastically supported major league teams from the stands. Today, our abilities reach far beyond being only observers and players of the game. They desire participation in ownership roles."●

TRIBUTE TO COL. CHARLIE FISHER

● Mr. DECONCINI. Mr. President, I would like to take a moment to call to my colleagues' attention an award that was received by a remarkable constituent from Sun City, AZ, retired Col. Charles Fisher.

On May 24, Colonel Fisher was inducted into the U.S. Army Infantry Officer Candidates School Hall of Fame. This award is bestowed on those who have distinguished themselves in military or civilian service. Charlie Fisher has an outstanding record of lifetime achievements in both these areas. He served with distinction in Europe during the Second World War. In receiving this award, Charlie Fisher joins many other outstanding Americans such as Senator DOLE, Caspar Weinberger, and former Secretary of the Army March. He served with the Department of the Army until his retirement in 1974. After he retired from active service, he entered the Army Reserve.

During his long and distinguished service in the Army, Colonel Fisher received numerous decorations including the Legion of Merit, Meritorious Service Medal with oak leaf cluster, U.S. Army Reserve Outstanding Achievement Medal, Army Commendation Medal, and the Good Conduct Medal.

Since his retirement, Charlie has directed his energies into the Retired Officers Association where he serves on the board of directors. He also serves as vice president for Army Affairs of the U.S. Reserve Officers Association. From these positions, Charlie has kept me informed on the issues of importance to these organizations. No association could have a more active and dedicated advocate, and I have relied on Charlie's counsel and advice throughout my Senate career. Charlie has also been an active member of the Sun City community. Arizona is indeed proud to count Charlie Fisher as one of its most distinguished citizens.●

FORUM ON ADOLESCENT HEALTH

● Mr. INOUYE. Mr. President, I would like to express my sincere appreciation to the individuals who participated in the community health forum on adolescent health which the Office of Children and Youth, State of Hawaii, and I cosponsored on May 25, 1991, at the Farrington High School Auditorium in Honolulu, HI.

I was especially pleased with the diverse representation of health-care pro-

viders, educators, community leaders, concerned parents, and youth who participated in the forum. Their presence indicated that the people of Hawaii want to address and respond to the serious health concerns which affect our adolescents today. They are ready to cooperatively work to improve and provide the best possible health care services for Hawaii's youth which, in turn, affects an adolescent's ability to learn and become a contributing member of our society.

Mr. President, we in paradise are not shielded from our Nation's adolescent health problems. In 1988, a State department of health report, "Adolescent Health In Hawaii," indicated that among our 10th graders, 42 percent engage in sexual intercourse, 40 percent have family problems, 17 percent have attempted suicide, 18 percent use cigarettes, 14 percent use marijuana, 41 percent use alcohol, and 15 percent use drugs. It is tragic that the majority of our young people report that they have only medium self-esteem. At such a young age, they should feel good about themselves, and about the prospects of a bright and challenging future.

During the 2-hour community meeting, we discussed issues which were highlighted in the Office of Technology Assessment report entitled "Adolescent Health." My distinguished colleagues, Senators KASSEBAUM and STEVENS, and I, together with 34 other Members of Congress, requested this report in 1988, and I am proud that it has stimulated positive initiatives to promote health and preventive measures for adolescents and their families. I would now like to summarize the comments and recommendations of my constituents regarding the future welfare of our adolescents:

Access to health care services for our adolescents was the primary concern among the participants. The health-care providers and educators in Hawaii, Ms. Geri Marullo, deputy director of the department of health [DOH], Ms. Virginia Jackson, DOH program specialist of the children's adolescent mental health division, Dr. David Paperny of Kaiser Medical Center, Mr. Kengo Takata, department of education, State department superintendent, and State Representative Dennis Arakaki, agreed that health and education go hand in hand. Each in their own way voiced support for the establishment of a school-based health clinic. A pilot program has been scheduled for the 1991–92 school year. It is planned that such a center would provide comprehensive services which include care for physical illness, general medical examinations needed for involvement in athletics, mental health counseling, laboratory tests, reproductive health care, counseling for family members, prescriptions, and coordination of care. Moreover, Mr. Myron Thompson, Kamehameha Schools/Bishop estate trustee, shared the successes of some similar school-based health centers, prenatal education, and early education prevention programs. Their successes indicate that the State's pilot program, as well as other joint health and education programs, can succeed with the proper administration which is sensitive to the needs of the students and the concerns of their parents.

The concerned parents, Ms. Barbara Afe, Ms. Yvonne Zembik, Ms. Victoria Letuli, Ms. Jasmine Williams, Ms. Theresa Cummings, and Ms. Shirlee Goodgame agreed that adolescents are in need of more health education and accessible facilities. However, they strongly objected to the relinquishment of parental rights and the potential lack of parental involvement at the school-based health care centers, and requested that they be included in the decisions involving contraception and other health care matters. They also requested consideration of more family-oriented programs, such as guidance on better interactions between the youth and the parent. It is their view that healthy adolescents are dependent upon a healthy family.

Mr. Carlson Jedrick and Mr. Travis Wilder, students of the Hawaii Job Corps, and Ms. Helene Zeug and Ms. Merleen Subia, leaders of the 4-H Program, shared their positive experiences in these programs with me. Both Mr. Jedrick and Mr. Wilder received vocational education and training that boosted their self-esteem after numerous difficulties in the past. Ms. Helene Zeug and Ms. Merleen Subia, of the 4-H Program, assisted young adults in developing life skills such as parenting and proper nutrition habits. They believe that these programs are invaluable in providing at-risk youth with the opportunity to become healthy and contributing members of society.

The president of the Hawaii State Student Council, Mr. Winston Sakurai, expressed what it is like to be an adolescent. He stated that it is a very difficult age; it is a transition from childhood to adulthood. He expressed that parents, as well as adolescents, must readjust to this growth. As the parent-child role evolves, the new relationship which develops may cause hardships and difficulties. Mr. Sakurai expressed his concern for more peer counseling and support groups at centers which are accessible to adolescents.

Mr. President, I believe that it is our responsibility to assist our adolescents in overcoming the increasing obstacles which they face today. Prevention, through education and health promotion, is critical to ensuring that adolescents make a healthy transition into adulthood. The success and valuable input secured at the adolescent health forum clearly demonstrated that we, in Hawaii, are ready to meet the challenges which lie ahead in providing our youth with the best accessible health care services.●

THE RESULTS OF THE BERLIN MEETING OF THE CSCE COUNCIL

● Mr. DECONCINI. Mr. President, as cochairman of the Commission on Security and Cooperation in Europe I am pleased to note the progress made during the recent meeting of CSCE foreign ministers in Berlin, June 19–20, 1991. The CSCE Council is an integral part of the political consultative mechanism mandated by the heads of state or government of the CSCE participating states during their summit meeting in Paris last November.

In keeping with its mandate, the Council considered a number of CSCE-related matters. The first matter of business was to endorse the full participation of Albania in the Helsinki process, signaling an end to that country's self-imposed isolation. Albania spurned a role in CSCE when invited to participate in the early 1970's. Now, as a mark of Albania's progress toward democracy, Albania officially stated its acceptance in their entirety of all commitments and responsibilities contained in the Helsinki Final Act and other CSCE documents and declared its determination to act in accordance with their provisions. I am encouraged by this development and look forward to further improvements in the human rights situation in Albania. I have followed developments in Albania very closely and have led two delegations to that country to meet with government officials, opposition leaders, and private citizens.

Taking account of the current situation in Yugoslavia, the ministers issued a statement expressing "friendly concern and their support for democratic development, unity, and territorial integrity of Yugoslavia." They called for "full application of human rights in all parts of Yugoslavia, including the rights of minorities." "The way out of the present difficult impasse should be found without recourse to the use of force and in conformity with legal and constitutional procedures," they said.

The ministers welcomed the establishment of a CSCE parliamentary assembly based on the resolution adopted by parliamentarians from the participating states in Madrid in April. According to the resolution, the assembly will meet once a year to, among other things, assess the implementation of CSCE objectives.

The ministers took an important step in calling for the start of informal preparatory consultations to lay the foundation for new negotiations on disarmament and confidence and security building. These consultations are expected to begin in September. The actual negotiations, to be open to all CSCE participating states, are likely

to convene in early 1992 following the Helsinki followup meeting.

Finally, the ministers also sought to further elaborate CSCE structures for conflict resolution, including the Vienna-based Conflict Prevention Center [CPC]. While I welcome such initiatives, a close reading of the discussions in Berlin give cause for serious concern.

Last November the CSCE leaders observed that Europe is liberating itself from the legacy of the past. Apparently we still have quite a way to go in this quest despite considerable progress in the past few years. For example, when the issue of the Baltic States was raised in Berlin last week, Soviet Deputy Foreign Minister Kvitsinsky termed the matter an internal affair outside the jurisdiction of CSCE.

The Soviets have a long history of relying on this stale phrase whenever they wanted to avoid addressing an issue, particularly human rights. It fell out of use in the mid-1980's as Soviet officials began to engage in human rights and other important aspects of United States-Soviet relations. We had all hoped that, like so many vestiges of the period of stagnation, this phrase too had been dropped from the Soviet lexicon. But the legacy of the past continues. Even more dismaying is the fact that the United States and other CSCE states agreed to its return to CSCE.

Work on a mechanism for emergency consultations and peaceful settlement of disputes was threatened when the Soviets raised objections, arguing that the mechanism could be used to undermine the principle of nonintervention in internal affairs. While it is true that the Final Act contains a section by this title, its provisions are primarily directed against the threat or use of force. Nevertheless, this has not stopped the Soviet Union from citing this principle when other participating states would raise questions regarding Moscow's human rights policies and practices.

Mindful that under the CSCE consensus rule the Soviets held an effective veto over their work, the participants bowed to Soviet pressure to include an explicit reference to the principle of nonintervention in internal affairs to mollify Soviet concerns. The resulting compromise sends the wrong signal to Moscow at a time when it is the state which is resorting to strong-arm tactics and aggression against the Baltics.

The Baltic issue is not a domestic matter as Soviets attempt to portray it. The United States and many CSCE participating states have never recognized the illegal and forceful incorporation of Latvia, Lithuania, and Estonia into the Soviet Union.

Nonintervention is not the issue. No one has suggested the use of force in the Baltics, that is of course except for certain reactionary elements in the Soviet Union and their allies in the Baltic States. Special military units dispatched by Moscow have killed more than a score of civilians in the Baltic States since the beginning of the year. Other forms of intimidations have been used as well. Ironically, the only ones using force in the Baltics are the Soviet occupiers. The time has come to end the Soviet Union's 51-year occupation of Latvia, Lithuania, and Estonia, a legacy of the Stalinist period.

The real issue is self-determination—one of the principles likewise enshrined in the Helsinki Final Act. "By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social, and cultural development," it declares. The peoples of the Baltic States have democratically and peacefully expressed their wish to be free and independent.

The real question is whether the West, including the United States, is willing to champion the cause of Baltic freedom. Merely repeating our nonrecognition policy is not enough. President Bush promised members of the Baltic community that, "the fate of freedom in the Baltics will remain high on our agenda." A concrete step which could be taken by the United States is to raise the issue at every opportunity within the CSCE. Likewise the United States should formally press for Baltic participation at CSCE meetings—something which has never been done—even if it risks a Soviet nyet.

Last week in Berlin, legitimate Baltic representatives were relegated to the sidelines, being allowed to attend only the public opening and closing ceremonies. They were then sent to the locker room when the Soviets objected to their continued presence. The Baltic States desire, and deserve, to play an active role in CSCE.

Last week, German Foreign Minister Hans-Dietrich Genscher, in welcoming Albanian participation in CSCE, said that the "last gap in Europe has now been closed." That may be the view of some here and abroad. I disagree.

The CSCE is often called the all-European process. I look forward to the day when all European states, including the Baltic States, are listed among the participating states of the Conference on Security and Cooperation in Europe. Such a reality will be possible only if the United States backs up its words with concrete deeds.●

TRIBUTE TO COL. RICHARD V. GORSKI

● Mr. JOHNSTON. Mr. President, I rise today to honor Col. Rick Gorski, U.S. Army Corps of Engineers, upon his retirement on July 1, 1991, after 25 years of dedicated and professional service.

Colonel Gorski's military record represents a professional career filled with extraordinary accomplishments. A graduate from the U.S. Military Academy at West Point, Colonel Gorski has proudly served in assignments throughout the United States, to include the Pentagon, and in command and staff positions with military engineer units in Southeast Asia and Europe. Among his military awards are the Legion of Merit, the Bronze Star, the Air Medal, the Ranger tab, and parachutist badge.

Mr. President, in January 1989, Colonel Gorski became the 52d Commander and district engineer of the New Orleans District, U.S. Army Corps of Engineers. During this period, he has guided the largest civil works district in our country. He was responsible for water resources development in 30,000 square miles of south-central and coastal Louisiana and several major hurricane protection and flood control projects. Additionally, Colonel Gorski was responsible for 2,800 miles of navigable waterways, among them the Mississippi River ship chanel and some 300 miles of the Gulf Intracoastal Waterway, as well as the Mississippi River and tributaries flood control project.

I am personally grateful for Colonel Gorski's leadership on the many projects to protect and enhance the coastal and inland wetland resources of Louisiana. Specifically, his involvement with the Caenarveon fresh water diversion project was truly invaluable as was his commitment to the restoration of Queen Bess Island, Wine Island Shoals, and the beach at Grand Isle.

Today, I not only acknowledge and congratulate Rick Gorski on his exceptional service to our country, but I also applaud and thank him for his valuable and lasting contrtibutions to the State of Louisiana. Simply, Mr. President, we will miss his leadership and foresight, and we wish him, his wife, Lina, and their two children, Lisa and Amanda, much success and Godspeed.●

THE IMPORTANCE OF TEACHING WESTERN CULTURE AND VALUES IN SCHOOLS

● Mr. LIEBERMAN. Mr. President, the New York Times, on Friday, June 21, 1991, ran a front page article about the State of New York's attempts to refashion its schools' teaching of history and of social studies. A State panel of teachers and scholars presented to the State Education Commissioner a 97-page report titled, "One Nation, Many Peoples: A Declaration of Cultural Independence." I have two serious objections to this report: First, that if its recommendations were undertaken in full it would undermine real education in this country; and second, that by so doing, it would undermine some of the common cultural and

historical experiences which are the underpinning of our democracy.

The report is an indictment of the present teaching methods and subjects. It charges that it is only a part of our culture which is taught, that more weight should be given to "the country's diverse ethnic traditions and the sufferings of some immigrant groups," according the the Times. That sounds worth considering until one reads further. Columbus would no longer be a discoverer, but a voyager, as if he had merely decided to take a cruise. Thanksgiving would no longer be celebrated but rather, acknowledged as, for some groups, a day of mourning.

The report suggests that the United States is a culturally diverse country, that we share no common culture, that what is being taught in our schools is only the prerogative of white males, that it is aggressive, intolerant of nonwhite cultures and expansionist. What does it mean to be an American, Mr. President, if we have no shared culture? I think we do have a shared culture; I know it must be taught in the schools. One large part of our shared culture is our form of government; it is democracy, that pledge we take to one another that we will lay aside cultural differences when we need to in order to continue to live in a land that is free, a country that is based on the notion that all are created equal, a country with a bill of rights and a constitution designed to protect those rights, a country unique in the history of the world because of this shared ideal.

It is highly ironic, to say the least, Mr. President, that at a time when countries around the world are struggling to adopt and to better understand our history, culture, our values and our emphasis on the individual rights of human beings over those of the state, that in this country we should be turning our backs on those ideals, and disparaging that common culture and history. Mandela, Havel, and Walesa all came to address this body to celebrate those very ideals, that very culture and history. What is Mandela's struggle but for the rights of the individual over that of the state? Havel and Walesa stood before the Congress of the United States and quoted to us the words of Jefferson, the words of Lincoln. The Bill of Rights and the Constitution were, until recently, secretly passed around hand to hand on the streets of Prague and Warsaw. They were considered too dangerous because they celebrate the rights of the individual over that of the state. In our country, I fear, there are those who would like to see those documents hidden away in dusty libraries, no longer relevant.

To understand where those ideas come from and why men and women have been willing to die—not just Americans—in their cause, we must have an understanding of Western civilization. Those ideas came from a basis of shared experience and learning. The ideas are enlightened and informed by new experience and by the contributions of each new generation and each new American; but our system of government and of law is based on assumptions about the world and our place in it that come predominantly from Western culture, and to demean learning about that culture in the name of expanding our understanding is to me wrong-headed.

Dean Donald Kagan of Yale College gave an address earlier this year in which he says much more eloquently than I why it is important to keep on teaching Western culture and Western values in our schools.

> Our country is not a nation, like most others, "Nation" comes from the Latin word for birth: A nation is a group of people of common ancestry, a breed. Chinese, Frenchmen, and Swedes feel a bond that ties them to their compatriates as to a greatly extended family and provides the unity and commitment they need. But Americans do not share a common ancestry and a common blood. They and their forebears come from every corner of the earth. What they have in common and what brings them together is a system of laws and beliefs that shaped the establishment of the country, a system developed within the context of Western civilization. It should be obvious, then, that all Americans need to learn about that civilization if we are to understand our country's origins, and share in its heritage, purposes, and character.

To the charge that Western literature and history should not be given prominence in school curricula because Western civilization has a history of "slavery, imperialism, racial prejudice, addition to war, and the exclusion of women and people not of the white race from its rights and privileges," Dean Kagan responds:

> The assault on the character of Western civilization badly distorts history. Its flaws are real enough, but they are common to almost all the civilizations known on any continent at any time in human history. What is remarkable about the Western heritage and what makes it essential is the important ways in which it has departed from the common experience. More than any other it has asserted the claims of the individual against those of the State, limiting its power and creating a realm of privacy into which it cannot penetrate * * * it is the champion of representative democracy as the normal way for human beings to govern themselves, in place of the different varieties of monarchy, oligarchy and tyranny that have ruled most of the human race throughout history and rule most of the world today. It has produced the theory and practice of the separation of church from state, thereby protecting each from the other and creating a free and safe place for the individual conscience. At its core is a tolerance and respect for diversity unknown in most cultures. One of its most telling characteristics is its encouragement of criticism of itself and its ways. Only in the West can we imagine a movement to neglect the culture's own heritage in favor of another. The university itself, a specially sheltered place for such self-examination, is a Western phenomenon only partially assimilated in other cultures.

I agree with the writers of the New York report that cultural diversity should be a strength rather than a weakness, that students should learn about their personal heritage in addition to their country's heritage. We should all be able to express our opinions freely to one another and to explore them together. But I also agree with Dean Kagan, that in order to do so, "some part of our studies must be in common, and their natural subject is the experience of which our country is the heir and of which it remains an important part."

One of the great attributes of our culture is its elasticity, its inclusiveness. We have regularly embraced new groups and new ideas in a substained attempt to achieve the democratic ideal we hve set for ourselves. We must not now demean our common heritage to show respect for components of it. We must not disparage our heroes like Columbus and our holidays like Thanksgiving in order to achieve contemporary political correctness.

Dean Kagan said further:

> During the revolution that brought us independence Benjamin Franklin addressed his colleagues, different from one another in so many ways, yet dependent on one another for survival and success, using a serious pun to make his point. He told them that they must all hang together or assuredly they would all hang separately. That warning still has meaning for Americans today. As our land becomes ever more diverse the danger of separation, segregation by ethnic group, mutual suspicion and hostility increases and with it the danger to the national unity which, ironically, is essential to the qualities that attracted its many peoples to this country.

Our shared cultures, Mr. President, may be more than any other on earth, a culture based on a principle, in that it is formed from a contract, an agreement we make as Americans that we will respect one another's differences and rights to be different, that we will join hands, even in disagreement, that we will forget temporarily our own ethnic backgrounds, assumptions, views of the world, when it is necessary to come together to protect our country of individuals.

That is not an easy concept to grasp, Mr. President. And I do not believe it can be grasped without a firm understanding of the real historical events that led us to this place, the points of view and cultural assumptions, and actual experiences of the men and women who have made up Western civilization.●

THE 75TH BIRTHDAY OF LARRY HALPRIN

● Mr. HATFIELD. Mr. President, Sunday, June 30, marks an important date—the 75th anniversary of the birth of one of America's greatest landscape architects, Lawrence Halprin. An article in Smithsonian Magazine, Decem-

ber 1988 referred to him as "one of the preeminent place-makers" of the 20th century.

Mr. President, I ask that this article be placed in the RECORD at the conclusion of my remarks.

Expert in many things, Larry delights most in designing gardenesque spaces where people are drawn to meditate, to explore or just to relax and feel a part of nature. Having spent his early years as a city boy in Brooklyn, Larry is a great believer in the importance of man being in harmony with nature. He sees mankind as an integral part of complex ecological operations.

Larry's experiences on a kibbutz as a youngster, taught him the value of labor and the value of the community in the life of the individual. These values are reflected in his beautiful creations.

I'm proud that my State of Oregon provided the launching site for national recognition of his talents. His design of the Portland Civic Auditorium Memorial received instant attention and praise. In San Francisco, where Larry moved following his studies at Harvard's Graduate School of Design and a stint in the Navy, he has designed Sea Ranch, Ghiradelli Square, Levi Plaza, Embarcadero Plaza and other wonderful outdoor spaces.

The crowning achievement in Larry's long and illustrious career, was his being selected by the Franklin Delano Roosevelt Commission to design the memorial to the former President. The memorial will be located in Washington, DC, near the Jefferson, Lincoln, and Washington Memorials. Designed in the 1970's, construction of the memorial is about to be commenced and dedication is scheduled for 1995. Created with sensitivity and passion, the Roosevelt Memorial consists of four outdoor rooms in which water and landscaping play an important role. The events of the Roosevelt administration will be told through sculptures and quotations of the President's which will be carved on the memorial's granite wall.

At 75 years of age, Mr. Halprin is busily engaged in what he most loves, designing beautiful outdoor spaces which enable people to go several directions, to be alone, to meet others, to reflect and experience. The personality of this great artist is best reflected by his own words in describing the neighborhood in which he and his wife, Anna, live:

> A redwood house in the woods; looking at the mountain and having it look back at me; forty years of living, the footsteps and laughter of my children, the continuity of Anna, the excitiment of the city seen across the bay. I could like my neighborhood to interface between private and common, and all kinds of diversity of people, ages, heritages.

I am pleased to congratulate Larry Halprin, creator of the Franklin Delano Roosevelt Memorial on his 75th birthday, and invite my colleagues to join me in wishing him many more years of bringing nature's beauty and tranquility into the cities of America.

The article referred to earlier follows:

LAWRENCE HALPRIN: MAKER OF PLACES AND LIVING SPACES

(By Benjamin Forgey)

On a pleasant, clear afternoon, Lawrence Halprin ambulates his handiwork—Levi's Plaza, an urban park on flatlands, between abandoned warehouse along San Francisco Bay and the eastern foot of Telegraph Hill. It's a splendid, surprising place with a great boulder fountain, a paved plaza, undulating green hilllocks, a winding man-made stream, beautiful trees placed just so, and plenty of welcoming nooks.

In one of these, Halprin, comes upon a woman seated alone, in dappled shade. Rhythmic splashings of water make a soothing backdrop for her meditations. A smile lights up Halprin's deeply tanned face as he turns to his guest and says, "I plan for that."

Levi's, completed in 1982, is a late masterwork, its seemingly effortless complexity a summary of all that has gone before. Halprin, now 72, a handsome, intense man with a warm, weathered, bearded visage and fierce eyes, has a right to be proud. He's customarily described as a landscape architect, which is fine, as far as it goes. But he's also an ecologist, environmentalist, city planner, urban designer, architect, writer, theorist, artist. What it all adds up to is that he is one of the preeminent place-makers of the 20th century.

Planning and designing common spaces where human beings can meditate or move about privately or together, has been the leitmotiv of Halprin's adventurous 40 years as a professional. He has done it many times and many ways in the San Francisco Bay Area, his home since the end of World War II, and also in Seattle, Fort Worth, Minneapolis, Los Angeles and Portland, Oregon, as well as in Florence, Italy, in Jerusalem, and in other cities big and small.

The Bay Area is a textbook of Halprin's growth. From early residential gardens in the hills of Berkeley or Marin County, to booming downtown San Francisco, where he's masterminded such large, complex projects as the remaking of Market Street and created such remarkable spaces as Ghirardelli Square, Embarcadero Plaza and Levi's to the windswept coastline of Sea Ranch, an extraordinary development 100 miles north of the city, the Bay Area has been his principal laboratory for thought and action.

Like most San Franciscans, native or adopted, Halprin firmly believes the city to be America's most beautiful, and he thinks and speaks of the Bay Area as a regional ecological whole. His lifestyle mirrors this conception. Halprin's office is located in the city itself—it's a commodious, made-over warehouse in a low-rent, low-rise, transitional zone south of the downtown skyscrapers. His home is a wooded retreat in Kentfield, on the eastern flank of Mount Tamalpais north of the city, where he and his wife, Anna, an avant-garde dancer and choreographer, have raised their family. Halprin, of course, designed the pathways and the redwood dance deck, for more than 30 years the setting not only of Anna's investigations of dance but also of Halprin's own fruitful early experiments to track the ways real people move around in real spaces. Involving students, dancers and professionals in diverse fields, the experiments were encounters in which no one could anticipate the result, but through which dynamic and vital solutions to problems of public and private space were suggested.

Halprin was born in Brooklyn in 1916. His father, Samuel, was president of a scientific-instruments export firm; his mother, Rose, was a prominent figure in American Zionism. One can see budding in Halprin's early life many of the patterns that have characterized his maturity. It may not be far-fetched to see something of his mature persona—the tension-filled combination of passionate independence with an equally strong belief in close collaboration—in his high school career as a baseball player. In this team-oriented sport Halprin was a star and his position was that of pitcher, the most independent yet in-control member of the team.

Halprin's teenage experience on a kibbutz between Haifa and the Sea of Galilee directly foreshadowed his intellectual and practical involvements with communities and the commonality of public spaces. "It was utopian, idealistic and socially adventurous," he recalls enthusiastically. "I learned the idea of labor as a value there—it's not something you do when you can't do something else. And the common ownership of things communal—you could read directly from that some of what we did at Sea Ranch. Plus, we planted great acres of trees in those rocky hills at Sea Ranch," he continues. "I planted more than half a million trees there." Halprin's idealism obviously hasn't been lost, just tempered by long experience.

He was a city boy who also loved nature and the country. When college time came he chose not a city school but the Cornell University School of Agriculture in upstate Ithaca, from which he received a B.S. degree in 1959. Two years later he received a master's degree in horticulture from the University of Wisconsin. At both institutions he put together an unusual assortment of courses—botany, geology, geography, landscaping—that transcended the norms of the time. "I studied what amounted to ecology," he reflected, "but of course nobody called it that."

In his mature career Halprin became the most ecologically conscious of designers—he sees mankind as an integral part of the complex ecological operations. Perhaps more fully than that of any other major designer, Halprin's approach fits the prescription of Ian McHarg, another seminal figure in postwar landscape architecture. McHarg's important 1969 book was titled "Design with Nature," and this succinctly is what Halprin seeks to do.

As a scholarship student at Harvard's Graduate School of Design, with an outstanding group of classmates (including Philip Johnson, I. M. Pei, Edward Larrabee Barnes and Paul Rudolph) under a stellar collection of teachers (architects Walter Croplus and Marcel Breuer, designer-photographer László Moholy-Nagy and landscape architect Christopher Tunnard), Halprin added a solid grounding in architecture to this impressive base. "I'm good at a lot of things, but I'm best at designing," he has said unselfconsciously.

At Harvard he also encountered San Francisco architect William Wurster and his wife, social planner Catherine Bauer Wurster. Their friendship was to influence his decision to settle in San Francisco when he mustered out of the Navy as a lieutenant junior grade in 1945. Postwar San Francisco was an exciting place to be for a young man with his

ambitions and talents. Noted landscape architect Thomas Church was there; Halprin practiced in Church's office until 1949, when he went out on his own. And there was the background of a proud, idiosyncratic regional architecture.

In the 1930s Wurster and a group of similarly talented young architects had begun to experiment in what was to become known as the "Second Bay Tradition" (following the turn-of-the-century "First Bay Tradition" of Bernard Maybeck and others). An important characteristic of this group was that it consistently conceived of the natural site as an integral part of the building art. Not a few of the expansive "outdoor rooms" attached to their residential projects, including those of his own Wurster-designed home in Kentfield, were designed by Halprin in the late 1940s and throughout the '50s.

No less important was the fact that in Berkeley a group of landscape architects and city planners had sewn the seeds of the strong regional planning movement that was to have significant positive impact on the Bay Area—helping, among other accomplishments, to save the bay itself from a disastrous amount of landfill. Their efforts were instrumental in the creation of the College of Environmental Design of the University of California, whose program of interdisciplinary breadth perfectly complemented Halprin's interests.

All of this was grist for young Halprin's mill. In addition, as his longtime friend and former associate Jim Burns points out, because of his work with Anna Halprin and her San Francisco Dancers' Workshop, "he spent a lot of time collaborating with people in areas of an art seldom encountered by most landscape architects: composers, musicians, scene and lighting designers, scriptwriters, performers, choreographers."

Halprin's professional interests and his involvement in avant-garde theory and practice continued to feed into each other, with surprising results. He conducted a series of unusual "Experiments in the Environment" at his place in Sea Ranch and elsewhere, participatory gatherings designed to uncover intuitive, collective responses to the natural and urban landscapes. Out of these experiments emerged, in the public sphere, what Halprin called "Taking Part" workshops, which were processes designed to get all elements of a community involved in helping to make decisions about its future. Such workshops helped to create a consensus behind a revived riverfront park system in Fort Worth, for example, and an invigorated Main Street in Charlottesville, Virginia.

Halprin's primary interest remained the urban park. As early as 1949, in a magazine article he had defined a garden as "a framework for activities." He invented a system he called "motation" (a word combining "movement" and "notation"), basically an alphabet of symbols indicating the principal characteristics of a given place, and the speed and direction of movement through it. On a freeway, for instance, you would have to know how many cars moved from one place to another and at what speed, the peak hours of travel, and the like. Motation can describe this. But, he adds, you would also want to imagine how esthetic and human needs, such as skyline and other views, might be met in the design. In the 1960s he refined and expanded this idea. This system enabled Halprin and colleagues not only to better record movement through the physical environment, but also to better design spaces in a way that guarantees a satisfying variety of activities. At Nicollet Mall in the heart of Minneapolis, for instance, through the use of curvilinear design, plantings, textures and stonework, Halprin has given an urban center an ambient, relaxing thoroughfare through which people obviously enjoy strolling, busy as they are.

All of Halprin's designs reflect this passion to give people as many options as possible—to go this way or that, to reverse directions, to pause, to start over, to be alone, to meet others, and to experience as many different sights, smells and sounds as the site permits.

The '60s, not coincidentally, was the decade of Halprin's emergence as an international force in urban and landscape design. In January 1960, the Lawrence Halprin firm incorporated into Lawrence Halprin & Associates, "an interdisciplinary group of planners, landscape architects, architects, ecologists, designers and photographers devoted to evolving experimental work that addresses broad issues of environmental design as well as social and political issues in regions, cities and public spaces."

For more than a decade this ambitious, high-energy crew would attract many of the best and brightest young designers from around the world. In 1962 alone, the firm began work on Sea Ranch, Ghirardelli Square and Embarcadero Plaza, and on Nicollet Mall—an amazing list. Each of these projects would have a major impact not only upon its immediate setting but also generally upon the theory and practice of "landscape architecture."

Sea Ranch became perhaps Halprin's greatest ecological design demonstration project. His master plan for clustering buildings to preserve natural contours, views and open spaces for common use was put to paper only after the most painstaking scrutiny of the terrain and climate. If today the principles ring of common sense (though they're still too often violated in practice, even at Sea Ranch in its maturing years), at the time they represented a dramatic break with customary my-home-is-my-castle (and damn everybody and everything else) building patterns.

Sea Ranch was also one of Halprin's first superscale collaborative ventures. Using a sympathetic palette of natural woods and shingle roofs, and a build-with-the-wind philosophy they had worked out together, all of the original architects—Charles Moore (SMITHSONIAN, JUNE 1984), Donlyn Lyndon, William Turnbull, Richard Whitaker and Joseph Esherick—won awards for their Sea Ranch projects. Halprin himself earned an Award of Honor from the American Institute of Architects for the Swim and Tennis Club he designed.

Ghirardelli Square was another bold break with convention and it, too, has become a famous model. Comprising a lively, sophisticated combination of older buildings (most notably a 19th-century chocolate factory) with new construction, it was the first of the major center-city success stories to pair preservation with new economic uses. Halprin's contribution may have been the most important part of the puzzle—a site plan that takes advantage of San Francisco's slopes, and a sequence of buildings, stairwells, pathways and open spaces to keep every visitor happily moving. Every visitor, that is, who is not enticed to pause awhile to enjoy the spectacle (and the tremendous views of the bay) from plentiful benches, chairs and sitting ledges.

Embarcadero Plaza, a wide, flat expanse at the edge of San Francisco's dense downtown, is the most open of Halprin's civic spaces. Conceived as a great communal gathering place, it was completed well before the giant buildings filled in behind it, and for years seemed rather too big and isolated. But it was foresightful—it's a necessary counterpoise to the scale of the new downtown and, unique in the city, it stands ready to accommodate all manner of celebratory event. "Every city deserves a space like this," he says, and he and Anna have helped to prove it by staging a number of dance celebrations there. The Embarcadero fountain, an engineering feat (designed in collaboration with artist Armand Vaillancourt), forms a bold, behemoth endpiece to the plaza.

Nearby, in green relief to the plaza's nearly treeless expanse, is Embarcadero Park, another Halprin design with a point to prove: it was molded out of leftover land underneath sweeping freeway ramps, making sculptures out of them. Even though like many San Franciscans he opposed the freeway itself, Halprin, almost alone, saw the potential of the land below it. Later, in Seattle, he performed a similar transformation with the Seattle Freeway Park, except that this time the reclamation occurred above and to the sides of the burrowed, divisive highway. "The trick," he said, "is to perceive the old freeway as a part of the cityscape and tame it, rather than complain about it."

COPING WITH THE UNIVERSALLY UNKNOWN

Nicollet Mall was another exercise in urban reclamation, one of the early major efforts (and, far and away, one of the more successful) to return a traditional, decaying center-city street to pedestrians. Besides devising an ingenious, curving, central service roadway, which gave them the opportunity to vary the width of the sidewalk and thus to create there a number of special places, Halprin and company designed all the "street furniture"—light standards, planting pots, clocks, benches, bollards, bike racks. "The office enlarged itself in response to these needs," he recalls. "We had to cope with things we didn't know anything about, and nobody else did either."

It was Lovejoy Plaza in Portland, begun in 1961, that propelled Halprin and his firm into the public consciousness in a big way. Lovejoy was a dramatic, eminently photographable, extraordinarily usable turnabout from the big, featureless plazas then afflicting American cities—a climb-on, walk-through, look-at and listen-to-me sculpted space whose visual, psychological centerpiece (typically a bit off-center) is a spiraling, cascading waterfall. If few enthusiastic visitors are aware of the motational studies by which Halprin was able to calculate the variety of activities they would enjoy there, all are able to sense the stupendous naturalness of its monumental concrete forms.

Halprin spent weeks in the High Sierra studying rock formations and the movements and sounds of water in a natural habitat (rare is the Halprin park that does not employ water in myraid ways), and vigorously recording them in his notebooks. His idea, he has often said since, is not to imitate the actual forms of nature but to emulate its processes. His success in Portland was galvanic: the Lovejoy fountain was an immediate hit and it remains the most famous image of a Halprin park to this day.

What is less known to those who have not visited the city is that Lovejoy is but a part of a larger entity called the "Portland Open Space Sequence." A block away is Pettigrove Park, as serene as Lovejoy is vivacious, with its green, shaded knolls. Three blocks along this urban sequence—the parks are surrounded by relatively non-descript modern

office, apartment and parking structure—is the Ira Keller Fountain, another one of Halprin's stunning, walk-on, waterfall-fountain plazas. This tension-release-tension sequence is typical of Halprin. It also illustrates his formidable persuasiveness: the fountain, completed in 1970, was to have been a parking lot in front of a new civic auditorium until Halprin complained strenuously to the powers that be and, trump, was able to turn it into a notable civic resource.

Still later he added another important piece, the Portland Transit Mall, comprising two parallel, limited access streets 12 blocks long, in the heart of the city, each with special plantings, pavings and street furniture. To Halprin, the pedestrian-friendly links between the larger parts of the sequence are its most important aspects: "They are a progression of walkways, fountains, little places to sit, benches, plazas—I think that all cities based on this principle would become beautiful cities."

As Halprin's reputation flourished, the firm grew space; in 1973 he opened a short-lived branch office in New York. But just as his experimental temperament and intellectual interests paralleled the opening up of art forms (particularly dance) in the 1960s, so did his office reflect the decade's strains. The original members of the firm, especially Halprin, continued to make most of the basic design decisions; the younger people, resentful, demanded a more principatory organization. This seemed fair, in view of the philosophy the firm was practicing in its Taking Part workshops. But the resulting reorganization of the firm was an uneasy compromise.

In 1975 Halprin suddenly disbanded his flourishing firm to pursue full time his interests in Round House, a "studio/think tank" with an experimental bent. Not surprisely, Halprin's time away from the design studio was brief. He reopened his practice in 1978, and the new organization is a tight, familial, ten-person ship of which he unquestionably is the captain. His weathered face has taken on the look of one of his beloved, craggy outcroppings in the Sierra, an effect intensified by his manner of dress—he favors lumberjack checks, string ties, big Western belt buckles. He's relaxed, but he husbands his time intently between work, "friends all over the world" and family. (Daugher Daria has two children, Ruthanna and Jahan; daughter Rana also has two, Levanna and Micah. All are frequent visitors to the Halprins' homes.)

One of the projects Halprin undertook with Round-House (in collaboration with partner Sue Yung Li Ikeda) was a film about the proposed memorial to Franklin Delano Roosevelt in Washington, DC, which Halprin had designed in 1975 and which today remains his chief piece of unfinished business. The FDR Memorial, though smiled upon by the relevant federal agencies in the 1970s and approved by Congress in 1982, has not yet been funded.

Designed for the curving western edge of the Tidal Basin, near the monuments to Jefferson and Washington, it combines many familar Halprin themes—deployment of water as a primary element, the blending of man-made with natural features, the use of up-to-date materials and art, and a flex-and-release sequence of spaces to insure and enhance movement through space. The symbolic focal points are to be four "garden rooms" symbolic of Roosevelt's well-known Four Freedoms (speech, religion, and freedom from want and from fear).

It is, his wife Anna believes, "the most emotional" of Halprin's creations. If so, there are autobiographical reasons. "I went through the Depression with him," Halprin has said, echoing the feelings of many, "and I came out of it with him." By startling coincidence, Halprin was on picket duty aboard a destroyer off Okinawa when he learned of FDR's death. "We wept." Soon after, the ship was hit by a kamikaze plane and cut in half. Halprin was sent to San Francisco on survivor's leave.

Today Halprin is engaged with customary vigor on a variety of major design projects. Commissions underway include a master plan for an 80-acre tract of land (formerly occupied by a Fiat factory) on the outskirts of Florence; a mile-long streetscape with a centerpiece park, designed to bring an endangered form of activity—people walking pleasurably—back to downtown Los Angeles; and, closer to home, an endeavor to change people's attitude toward Alcatraz Island, so that the intrinsic beauty of the place, and not just its grim history as a maximum-security prison, will become apparent—and available—to all.

In Israel (his mother is buried in Jerusalem), Halprin has been almost continuously engaged in one project or another for three decades. ("I think, and I suspect that Larry thinks so, too, that, deeply, he is a Jerusalemite first," wrote Mayor Teddy Kollek in the book accompanying a 1986 Halprin retrospective exhibition at the San Francisco Museum of Modern Art.) His latest work there, completed last summer, is one of his more spartan, spectacular, beautiful creations.

This is the Walter and Elise Haas Promenade, a linear park that follows the sweeping line of a ridge about a mile south of the Old City, overlooking the Dome of the Rock. It is a land hallowed to Jew, Christian, Arab, Muslim. Halprin, with typical sensitivity, designed everything in it—the pathway paved with golden Jerusalem stones, a belvedere, steps, berms, niches, railings, magnificent lampstands—to let the land and the view and the sense of place speak for themselves.

In 1971, performing for himself a task he had assigned others in one of his workshops, Halprin wrote about his own neighborhood (in Kentfield) as, "A redwood house in the woods. Looking at Mount Tamalpais and having it look back at me. Twenty years of living—The footsteps and laughter of my children, the continuity of Ann. . . . The hammock swinging over the woods and then the long drive to the city. . . . The excitement of the city seen across the bay. . . ."

A rich, contented vision, up to a point. But the area is "Anglo-Saxon predominantly" and "upper-middle-class white," where there is "no echo" of his Jewishness and "very few community activities which bind us together except for our common love of the out-of-doors.

"I would like my neighborhood to be," he concluded, using first a visual symbol for interconnectedness and then the words, "interfaces. . . . Through linkages between private and common and all kinds of diversity of people—ages—heritages." It is the basic vision behind the wonderful, sophisticated spaces Lawrence Halprin has provided for us.●

COMMENDING THE 1ST INFANTRY DIVISION (MECHANIZED)

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 149, a resolution commending the 1st Infantry Division, submitted earlier today by Senators DOLE and KASSEBAUM.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 149) to commend the 1st Infantry Division (Mechanized) for their outstanding performance during Operations Desert Shield and Desert Storm.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

THE 1ST INFANTRY DIVISION

Mr. DOLE. Mr. President, on behalf of Senator KASSEBAUM and myself I offer Senate Resolution 149 commending the 1st Infantry Division (Mechanized) for their courage and sacrifice during Operations Desert Shield and Desert Storm. The "Big Red One" led the armored assault against Hussein's forces in one of the most dramatic flanking maneuvers in military history.

Throughout the campaign, from the first day of mobilization to the days following the cease-fire, the 1st Division conducted themselves in the highest traditions of the U.S. Army. All Americans can be proud in what our soldiers have accomplished and in the professional manner in which they performed what was asked of them.

I will join Senator KASSEBAUM and Army Chief of Staff General Sullivan in honoring the 1st Infantry Division this Fourth of July at Fort Riley, KS. On that day of national celebration, when Americans reflect on the devotion to duty and courage of our men and women in uniform—and when Americans celebrate our precious freedom so long cherished and defended—let them also remember the sacrifice of those who laid down their lives for its cause. May we be worthy of their sacrifice.

HONORING THE BIG RED ONE

Mrs. KASSEBAUM. Mr. President, on the Fourth of July, I will have the honor of participating in the welcome home ceremonies for the Big Red One at Fort Riley, KS. As President Bush has said, this should be one of the best Fourth of July celebrations in recent years.

The First Infantry Division at Fort Riley has a long history that gives pride not only to Kansans but all Americans. Our tribute to the Big Red One's mission in the Persian Gulf builds further on its many honors, including D-day, Korea, and Vietnam.

I am proud to join with Senator DOLE in supporting this resolution which expresses the appreciation of the Senate and the American people for the commitment, sacrifice, and success of all the members of the Big Red One and their commanding general, Thomas Rhame, in their effort in the Gulf.

The First Infantry Division had one of the toughest missions in the gulf war. The 12,000 men and women of the division from Kansas were sent to breach Iraq's defenses and were the first American unit to enter Iraq. They went up against Saddam Hussein's best forces, the elite Republican Guard, and successfully cleared a path into southern Iraq for other units.

The bravery and tenacity of the First Division was one of the essential keys to our success in the gulf war. As General Rhame has explained, the division pushed relentlessly both day and night, without giving the Iraqi soldiers a break, and defeated them resoundingly. The division's attack was unprecedented in terms of speed and distance. During their lightning strike, the First Division destroyed 388 Iraqi tanks, 400 armored personnel carriers, and took 11,400 Iraqi prisoners of war.

As a result of that great offensive action, the First Division was positioned for the historic mission of hosting the peace conference conducted by Gen. Schwarzkopf—an honor truly befitting the role they played in the war.

The price of freedom and peace never comes cheaply. As we honor the First Division on the Fourth of July, our hearts will be with those families whose loved ones made the ultimate sacrifice in the gulf war. It is their valor and the valor of the entire First Division that has contributed to making our Armed Forces and our country the symbol of freedom and democracy to millions of people around the world.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 149) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas the First Infantry Division (Mechanized) was deployed to the Persian Gulf in support of Operation Desert Shield on December 26, 1990.

Whereas over 12,000 soldiers and over 7,000 pieces of equipment were transported from Fort Riley, KS. To Saudi Arabia in less than 60 days. This deployment included a difficult equipment modernization "on the fly".

Whereas the First Infantry Division (Mechanized) arrived in Saudi Arabia trained and ready.

Whereas the First Infantry Division, under the brilliant command of Gen. Thomas G. Rhame, spearheaded the armored attack into Iraq on February 24, 1991, traveling over 260 kilometers in less than 100 hours and cut off the path of retreat for the fleeing Iraqi Army.

Whereas during the campaign, the 1st Infantry Division engaged and destroyed all or parts of 11 enemy divisions, including elements of the Republican Guard. The division captured over 11,400 Iraqi prisoners of war—twice as many as any other unit in the Kuwaiti theater of operations.

Whereas the "Big Red One" hosted the historic cease fire meeting between representatives of the allied coalition, led by General H. Norman Schwarzkopf, and the defeated Iraqi Army.

Whereas following the defeat of the Iraqi Army and the cease fire, the 1st Infantry Division continued to clear Iraqi equipment, assisted in the repatriation of Kuwaiti citizens and assisted in relief efforts following the war: Now therefore be it,

Resolved, That—

(A) The Senate commends all of the soldiers of the 1st Infantry Division for their outstanding devotion to duty, professionalism, and courage under fire throughout Operations Desert Shield and Desert Storm;

(B) The Senate commends Maj. Gen. Thomas G. Rhame, his staff, and all the commanders and leaders for their superb command, brilliant tactical employment of forces, and outstanding leadership of the "Big Red One".

Mr. SYMMS. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

STATUS OF SALVADORANS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2332 regarding the status for Salvadorans.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2332) to amend the Immigration Act of 1990 to extend for 4 months the application deadline for special temporary protected status for Salvadorans.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Is there debate?

Is there objection? Without objection, the bill deemed read a third time and passed.

So the bill (H.R. 2332) was deemed read a third time and passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INTELLIGENCE AUTHORIZATION ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be discharged from further consideration of S. 1325, the intelligence authorization bill, and that the Senate then proceed to its immediate consideration.

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

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1325) to authorize appropriations for fiscal year 1991 for intelligence activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to considered the bill.

Mr. BOREN. Mr. President, the Senate takes up today the Intelligence authorization bill for fiscal year 1991. Congress passed an earlier version of this bill last October, assured at the time that the President would sign it.

In the weeks following adjournment, however, administration lawyers discovered problems with the bill that they had not seen previously. Despite my efforts and those of Senator COHEN, who was vice chairman of the committee at the time, to assure the administration that the concerns belatedly being raised were unfounded and could be addressed if necessary in this year's bill, the President announced on November 30, 1990, that he would not sign the bill.

In his message of disapproval, he cited two principal concerns, both arising in the so-called oversight title of the bill.

The first dealt with a sentence added in conference to the definition of the term "covert action" which provided that a request to a foreign government or private citizen to undertake a covert action on behalf of the United States would itself be treated as a covert action requiring a Presidential finding and prior reporting to the Congress. The President objected to this wording because he believed it would interfere with the conduct of diplomacy. In his view, it would create uncertainty upon diplomats and could deter foreign governments from undertaking diplomatic discussions.

The second concern dealt with report language explaining what is meant by notice "in a timely fashion." As you will recall, Mr. President, under existing law, the President is required to provide prior notice of covert actions to Congress, but that when prior notice is withheld, notice must follow "in a timely fashion."

This phrase is not defined in existing law, nor is it explained in legislative history. In 1986, in the aftermath of the Iran-Contra disclosures, the Department of Justice issued a legal opinion interpreting this phrase as providing the President with "virtually unfettered discretion to choose the right moment to notify the Congress" of a covert action. In later testimony on this opinion, the justice department witness conceded that this might mean months or even years.

Needless to say, this interpretation was completely at odds with the committee's interpretation of timely notice. Indeed, such an interpretation would deprive the phrase of any meaning at all.

We took this matter up with the Bush administration in 1988, asking how the President intended to comply with the statutory timely notice requirement. In a letter to both intelligence committees, he explained his intent as follows:

I anticipate that in almost all instances prior notice will be possible. In those rare instances where prior notice is not approved, I anticipate that notice will be provided within a new days. Any withholding beyond this period will be based upon my assertion of authority granted this office by the Constitution.

In the oversight provisions of the fiscal year 1991 Intelligence authorization bill, the timely notice formulation of current law is retained. In reenacting this phrase last year, however, we thought it important that the Justice Department's legal interpretation of this phrase as it had existed in previous law be rejected. Moreover, we sought in last year's report language to explain that in our view timely notice meant within a few days as the President had said he intended to comply with existing law. The conference report was deliberately silent on the issue of whether the Constitution might permit the President to withhold for longer periods.

In any case, the President in his veto message said he regarded the conference report language as undercutting his agreement with the committee by saying that "notice in a timely fashion" should be interpreted to mean "within a few days" without exception. According to the President's statement, this interpretation would "unconstitutionally infringe on the authority of the President and impair any administration's effective implementation of covert action programs."

This had not been our intent. Indeed, it is difficult to see how report language interpreting a statutory provision could infringe upon the constitutional authority of the President. We were only explaining what our own intent had been in enacting the statute, not to circumscribe or limit authorities granted by the Constitution.

Still, we were willing to work with the President to see if we could not arrive at an explanation of the phrase "notice in a timely fashion" that would satisfy the basis requirements of both branches.

I am pleased to report, Mr. President, that the committee has been able to arrive at compromise language with the administration on the third parties issue, and, while we do not yet have agreement on the report language on timely notice, it has been substantially revised in a good faith effort to craft reasonable language that respects the positions of both branches. I am satisfied we have accomplished all that we can in our discussions of this provision, and it is time to move the legislation. I am hopeful that the House will accept this compromise in conference, and, ultimately that the administration itself will see its way clear to accept it. This is a reasonable compromise arrived at after a long series of ardous discussions; in no way would it justify a veto of this bill.

Let me explain very briefly how we propose to resolve the administration concerns.

First, on the issue of requests to third parties, we have agreed to drop the word "requests," which was at the heart of the President's concern, but to amend the definition of covert action to clarify that any covert action which is undertaken "on behalf of the United States and under its control" will require a finding and notice to the Congress. In report language on this provision, we go on to state that we regard any situation where the United States is providing funding or other forms of significant assistance to a third party, or U.S. personnel are involved in providing direction and assistance to a third party, to undertake a covert action on behalf of the United States, we consider these situations to require prior Presidential approval and reporting to the Congress.

The administration agrees with this approach. What we were unable to agree on is whether the circumstances cited in the report language were the only circumstances where U.S. control of a third pary might constitute a covert action. The administration would, indeed, have preferred describing these circumstances as the only ones where U.S. involvement might constitute control for purposes of the definition. My personal view is that there could be circumstances other than those cited specifically in the report language where U.S. involvement might constitute control. The report language is silent on this point, however, setting forth only the circumstances where agreement was possible.

On the timely notice issue, the report language on this provision has been revised in a manner which I believe reflects comity between the branches and best serves their respective interests in this critical area. It makes clear that it is our mutual intent to return to the understandings of 1980 which underlay the timely notice formulation as initially drafted.

From the standpoint of the committee, this means rejecting the Justice Department's interpretation of existing law to give the President unfettered discretion when to notify Congress of covert actions. It also means making clear the committee's own interpretation of the statutory notice requirement.

From the standpoint of the administration, it means obtaining recognition that regardless of how the timely notice formulation might be interpreted in report language, the authority of the President to withhold notice of covert actions from the Congress ultimately depends upon the authorities granted the President by the Constitution. The President understandably does not want to be in the position of having to violate a statutory requirement—as interpreted by report language—in order to assert such constitutional powers.

We believe that the needs of both branches are accommodated by the language of the report. While we make clear that we believe it is in the mutual interest of both branches to interpret timely notice to mean within a few days, as the President himself has said he intended to implement existing law, the report makes clear that this interpretation cannot be legally binding upon the President if the Constitution does, in fact, provide authority for the President to withhold notice of covert actions for longer periods. In his letter to the committees, which I noted earlier, the President asserts that such authority exists. The committee has never accepted this assertion, but we recognize that we are in no position to resolve the constitutional issue. We cannot by statute add to or subtract from whatever powers may be granted by the Constitution. We are willing to leave the matter there.

It is also essential, Mr. President, that in considering the resolution of the two points at issue, we not lose sight of the importance of the oversight title as a whole. Title VI of the Senate bill represents a major overhaul of the legislative framework for the congressional oversight of covert actions. It is the single-most important legislative response to the deficiencies highlighted by the Iran-Contra affair. Indeed, it implements many of the recommendations made in the final report of the Iran-Contra committees.

The fact of the matter, Mr. President, is that congressional oversight of covert actions depends primarily upon directives issued by the executive branch and upon prior practice, rather than upon law. Title VI of the Senate bill seeks to change this—to establish clear and comprehensive rules to govern the approval and reporting of covert actions in a form that cannot be changed or ignored by future administrations.

Let me list a few specific examples;

Existing law—the Hughes-Ryan amendment—prohibits only CIA from using appropriated funds to carry out covert actions without a Presidential finding and reporting to the committees. The oversight title applies this restriction to all agencies.

Existing law—the Hughes-Ryan amendment and the 1980 Oversight Act—applies only to covert actions undertaken by CIA and does not include covert actions undertaken by other elements of the Government. Executive Order 12333 fills the gap by applying the requirement for a Presidential finding and reporting to the intel-

ligence committees to all agencies. The oversight title would by law extend this requirement to any element of the Government which is used to carry out a covert action, not simply CIA.

Existing law—the Hughes-Ryan amendment and the 1980 Oversight Act—defines covert actions only as operations in foreign countries, other than activities intended solely for obtaining necessary intelligence. This would literally cover every activity that CIA—or any other agency should they be covered—undertakes that is not intelligence collection. Such an interpretation is unworkable in practice and has been largely ignored by both the committee and the executive branch since it was written. There is nothing which authoritatively says what a covert action is and what it is not. A covert action is thus whatever it has become over time. The oversight title for the first time defines and explains the term in detail in an effort to authoritatively set forth what has been current practice. It cannot cover every possibility, but it provides far more certitude than we have at present.

Existing law has no provisions which require, first, that findings be in writing; second, that findings cannot retroactively authorize covert actions; third, that findings must specify all Government entities who are participating in a covert action; fourth, or that findings must specify whether third parties will be involved in carrying out the operation. An NSC directive substantially imposes these requirements on departments and agencies, but can be waived by the President. Title VI makes each of these requirements a matter of law.

Existing law has no prohibition on utilizing covert actions to influence domestic politics, public opinion, or the media. There is such a prohibition in Executive Order 12333. The oversight title makes this prohibition a matter of law.

Existing law has no provisions requiring that significant changes in covert action programs be reported in advance to the Congress. This has been existing practice, but title VI makes it a matter of law.

Mr. President, my point is, title VI to this bill represents a significant stop forward in terms of putting into the law itself a set of clear and comprehensive rules for oversight. These measures are good government measures, designed to ensure accountability and to ensure consultation in what is perhaps the most sensitive and potentially damaging type of activity in which this country finds it must engage.

I believe the administration deserves a great deal of credit for its willingness to accept the enactment of these salutary provisions. By allowing these reform measures to move forward, the President clearly demonstrates that he share our interest in creating a system of accountability and consultation which in the end can only serve the best interests of this country.

Mr. President, I hope my colleagues on both sides of the aisle will support this legislation. From an institutional point of view, it will provide a far more effective statutory framework for the exercise of Congress' proper oversight role in the area of covert actions. But it does not hamstring the President in terms of his ability to take timely actions to protect U.S. interests. No one wants that result.

This bill is important to the committee, Mr. President, for other reasons as well.

Although fiscal year 1991 is more than half over, it is important to the committee that expenditures of funds appropriated for intelligence activities be properly authorized. Section 502 of the National Security Act of 1947, in fact, provides that no appropriated funds may be expended for intelligence activities that have not been specifically authorized. From the committee's standpoint, only the annual intelligence authorization bill serves this function.

When the bill was vetoed last November, the committee so advised the administration, and while recognizing that expenditures for intelligence activities would necessarily have to continue until a new bill could be enacted, the committee was obliged to consider them of questionable legal status. We urged the administration, in the absence of an authorization bill, to nonetheless continue to abide by the spending limits and conditions contained in the bill. The administration advised us that it would do so.

It is, therefore, important to us even at this late date to have a specific authorization of intelligence expenditures.

In conclusion, I note there are a number of significant provisions in this bill apart from those I have already mentioned. All of these are as they appeared in last year's conference report. To summarize each very briefly:

Title I of the bill authorizes appropriations for the intelligence activities of the U.S. Government, incorporating by reference the classified schedule of authorizations. While this schedule is not made public, it is available to any Member in the committee's offices.

Title II authorizes appropriations for the Intelligence Community Staff for fiscal year 1991 at $28,880,000, and authorizes 240 personnel for that organization.

Title III contains a series of six minor amendments to CIA retirement programs. The most significant of these is section 305 which corrects an inconsistency in the treatment of former CIA spouses whose benefits were terminated because of remarriage before the age of 55. Under existing law, former spouses divorced after November 15, 1982, could have their benefits restored upon dissolution of their subsequent marriage, but former spouses divorced before this date could not. Section 305 permits both groups to have their benefits restored in such circumstances.

Title IV contains five general provisions pertaining to miscellaneous topics. Section 401 provides authority to pay increases in compensation and benefits which may be subsequently authorized by law. Section 402 provides that nothing in the bill authorizes intelligence activities which are not otherwise authorized by the Constitution or laws of the United States. Section 403 addresses a particular problem that CIA has had with employees of the foreign broadcast information service who serve as translators of public broadcasts in Hong Kong. Developed in consultation with the Immigration Subcommittees in both Houses, this provision permits the DCI to use unallocated portions of his annual allocation to permit up to 100 aliens to enter the United States to take care of FBI's employees who wish to come to the United States after 1997. Section 404 provides that certain counterintelligence positions in the Department of Energy will be excepted from the competitive civil service. Section 405 directs the Director of Central Intelligence to require elements of the intelligence community to contract with U.S. firms in appropriate circumstances.

Title V contains four provisions relating to Department of Defense intelligence activities. Section 501 permits DOD components to charge CIA the same rate charged to other DOD components for airlift services. Section 502 authorize the Defense Mapping Agency to withhold maps from public disclosure under certain specified circumstances. Section 503 provides the Director of the National Security Agency to use appropriated funds to provide assistance to certain former employees who may otherwise pose a security risk. Section 504 would provide authority to the Defense Department to engage in commercial activities to provide security for intelligence activities undertaken abroad by elements of the Department of Defense, albeit under a system of close and continuing internal and congressional oversight. Section 505 provides that the Secretary of Defense shall provide access to Members of Congress to a DIA report commonly known as the Tighe report concerning intelligence on POW's/MIA's.

Title VI, of course, is the oversight title I have already discussed.

In conclusion, Mr. President, let me simply acknowledge the contributions of all of the members of the committee, as well as our very competent and dedicated staff, to the development of this legislation.

It has been truly a cooperative, bipartisan effort of which the committee and the Senate itself can be proud. I urge my colleagues to support it.

Mr. MURKOWSKI. Mr. President, I am pleased that the Senate is now ready to address the 1991 authorization bill for the intelligence community. As you know, a previous version of the bill was not signed by the President. Senator BOREN, the distinguished chairman of our committee, and I began the process of working to resolve problems associated with the President's veto when we met with General Scowcroft and Judge Webster in January. Three issues were discussed with the administration, all relating to covert action.

The first issue, raised in the President's message of disapproval last year, pertained to language added by the House of Representatives in conference to the effect that any request to a foreign government or private citizen to conduct a covert action on behalf of the United States was deemed to be a covert action subject to the restrictions and requirements of the bill. The President believed this provision was drafted vaguely, and would adversely interfere with normal diplomatic exchanges. We have made changes to address these concerns.

Another issue, involving the definition of covert action and traditional Armed Forces activities, has been resolved with the Department of Defense.

The remaining issue, involving the definition of "timely" notice of covert actions, has been the most difficult to resolve. The law requires that the President notify Congress before he undertakes a covert action program. If circumstances make prior notification impossible, then the President must notify Congress "in a timely fashion." The definition of "timely" was not nailed down in 1980, when this provision was codified. We all are aware of the unfortunate lack of timely notice of certain covert action findings during Iran-Contra. In fact, the Senate at one point passed legislation requiring that "timely" should be defined as meaning "48 hours," although this view did not prevail in conference with the House last year.

Our committee and this President share a desire to make sure that Congress be notified promptly of a covert action finding—if the President cannot notify Congress before he undertakes a covert action program. However, getting from here to there has been enormously difficult. The President clearly believes he should not be bound by a specific time constraint, given his view that the Constitution provides him with certain flexibility as Commander in Chief. On the other hand, Congress has established an oversight authority that has as a fundamental underpinning the requirement that we be kept informed of many aspects of our intelligence activities, including covert actions.

Throughout our negotiations, I have communicated a number of times with the White House, as has the chairman. As a result of these discussions, I believe that we should adopt the bill now, and move it into conference with the House. Certainly, this issue of defining timely notice will be a major item to be discussed with our House counterparts. For our part, I believe our report language sets forth our understanding of what "timely" notice means. By the same token, we clearly set forth the President's view of his constitutional authority. In fact, our report concedes that neither the Congress nor the President is able to resolve this constitutional issue.

I share the concerns of a number of persons within the administration, and indeed in Congress about this issue. Foremost among them is the concern that, as we codify procedures relating to covert actions—which has not been completely done before—our language needs to be precise. This includes our report language where we interpret what we believe we have done. If our definitional language, or our interpretative language, is not clear, then in the worst case scenario, the special counsel statute may come into play. We must not permit a special counsel in the future latching on to loose language to investigate endlessly or to prosecute unfairly those who get caught up in political, rather than real, offenses.

The President clearly believes that, as Commander in Chief, a President possesses strong authority to conduct operations—covert and otherwise—without a rigid requirement to provide notice within a particular timeframe to another branch of Government, namely Congress. While President Bush has indicated in correspondence with both the Senate and House Intelligence Committees that he will provide notice "within a few days" of instituting a covert action program—assuming he cannot provide notice in advance—he has been careful to preserve his belief that the Constitution does not mandate this result.

On balance, I believe our report language on "timely" notice is carefully crafted to meet our institutional demands, and those of the President.

Mr. President, I want to close by commending Senator BOREN, chairman of our committee, for working so diligently to maintain the covert action and other reform provisions in our 1991 bill. This session I began service as vice chairman of the committee, and it has been a pleasure to work with Senator BOREN on this important measure. He made a commitment to include reform measures in this bill, and he has resisted the expedient approach when the going got tough to simply save those reform provisions for our 1992 bill. Much of what is in this bill is a credit to DAVID BOREN's persistence.

I urge the Senate to adopt this important measure.

The PRESIDING OFFICER. Is there further debate?

AMENDMENT NO. 515

Mr. SYMMS. Mr. President, I have an amendment on behalf of Senator SMITH that I send to the desk for immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS] for Mr. SMITH, proposes an amendment numbered 515.

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

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

The amendment is as follows:

At the appropriate place in the reported bill insert the following new section:

SEC. . FURNISHING OF INTELLIGENCE INFORMATION TO THE SENATE AND HOUSE SELECT COMMITTEES ON INTELLIGENCE.

(a) FURNISHING OF SPECIFIC INFORMATION.—In accordance with Section 501 of the National Security Act of 1947, the head of any department or agency of the United States involved in any intelligence activities which may pertain to United States military personnel listed as prisoner, missing, or unaccounted for in military actions shall furnish any information or documents in the possession, custody, or control of the department or agency, or person paid by such department or agency, whenever requested by the Senate or House Select Committee on Intelligence.

(b) ACCESS BY COMMITTEES AND MEMBERS OF CONGRESS.—In accordance with Senate Resolution 400, 94th Congress and House Resolution 658, 95th Congress, the Senate and House Select Committees on Intelligence shall, upon request and under such regulations as the committees have prescribed to protect the classification of such information, make any information described in subsection (a) available to any other committee or any other Member of Congress and appropriately cleared staff.

Mr. BOREN. Mr. President, the amendment of the Senator from New Hampshire is agreeable to the committee. It would make clear that the authority of the Intelligence Committees under existing law to have access to intelligence information applies fully to intelligence information concerning POW's/MIA's. Indeed, the committee has already written to the Secretary of Defense requesting access to such information and fully expects compliance with its request. I ask unanimous consent that a copy of this correspondence be printed in the RECORD.

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

SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, June 20, 1991.

SSCI 91-2865.

Hon. DICK CHENEY,
Secretary of Defense, The Pentagon, Washington, DC.

DEAR SECRETARY CHENEY: As you may know, my Senate colleagues, Jesse Helms, Bob Smith and Charles Grassley, have been extremely concerned and committed to resolving outstanding issues affecting American POW/MIAs in Southeast Asia.

It is my understanding that they have requested that intelligence documents be brought to the Senate for their review. I have been told that the Department of Defense and specifically the Defense Intelligence Agency has resisted making these documents directly available to the Senate.

I am writing to strongly urge that the documents in question be sent to the Senate to be reviewed by interested Senators and appropriately cleared staff.

As you know, the Senate Select Committee on Intelligence is currently the repository for thousands of highly classified documents. Notwithstanding the fact that the information request on POW/MIAs may be enormous, I believe that there may be ways to facilitate the requests of my colleagues, and at the same time, maintain the high security standards required. The Senate Select Committee on Intelligence is here to serve all members of the Senate, and I believe we can do so on the POW/MIA issue as well.

The POW/MIA issue is a difficult and emotional one for many Americans. I think we need to do all we can to resolve questions affecting the loved ones of so many American families. Again, I urge you to reverse the decision to deny the Senate direct access to intelligence documents. I stand ready to work with you in this regard.

Sincerely,

DAVID L. BOREN,
Chairman.

The PRESIDING OFFICER. Is there further debate on the amendment? Is there objection to the amendment?

The amendment (No. 515) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments?

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 83, H.R. 1455, the House companion, that all after the enacting clause be stricken, and the text of S. 1325, as amended, be inserted in lieu thereof, that the bill be advanced to third reading and passed and the motion to reconsider be laid upon the table; that the Senate insist upon its amendment, request a conference with the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

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

The Chair appoints the following conferees: From the Select Committee on Intelligence: Mr. BOREN, Mr. NUNN, Mr. HOLLINGS, Mr. BRADLEY, Mr. CRANSTON, Mr. DECONCINI, Mr. METZENBAUM, Mr. GLENN, Mr. MURKOWSKI, Mr. WARNER, Mr. D'AMATO, Mr. DANFORTH, Mr. RUDMAN, Mr. GORTON, and Mr. CHAFEE.

From the Committee on Armed Services: Mr. EXON and Mr. THURMOND.

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 1325 be indefinitely postponed.

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

THE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of Calendar Nos. 135, 136, and 137, that the committee amendments where indicated be agreed to; that the resolutions be adopted; that the preambles be agreed to; and that the amendment to the preamble be agreed to. That the motions to reconsider, en bloc, be laid upon the table; and the amendment to the title where appropriate be agreed to

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

Mr. MITCHELL. Mr. President, I ask unanimous consent that the consideration of these items appear individually in the RECORD and that any statements thereon appear at the appropriate place as though read.

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

EMERGENCY HUMANITARIAN AND POLITICAL SITUATION IN SOMALIA

The resolution (S. Res. 115) expressing the sense of the Senate regarding the emergency humanitarian and political situation in Somalia, was considered, and agreed to.

The preamble was agreed to.

The resolution and the preamble are as follow:

Whereas the civil war in Somalia has devastated the nation, and the lack of food, water and other humanitarian assistance threatens the lives of thousands of Somalis in the coming months;

Whereas the conflict in Somalia, even since the fall of President Siad Barre in January 1991, continues unabated;

Whereas the emergency humanitarian crisis is a direct result of the continuing civil conflict;

Whereas the response of the international community to pleas for humanitarian relief and assistance has been inadequate;

Whereas the United Nations, in particular, has not been active in promoting and mobilizing relief efforts;

Whereas the continuing conflict in Somalia inhibits relief efforts in Somalia; Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) all parties in the Somalia conflict should put humanitarian needs above military goals and declare an immediate cease-fire to allow the delivery of relief and to serve as the basis of a lasting settlement;

(2) the President of the United States should lead world-wide humanitarian efforts in Somalia to relieve the suffering;

(3) the President should assist the efforts of private voluntary organizations, including the International Committee of the Red Cross and Doctors Without Borders, in their humanitarian efforts in Somalia;

(4) the United Nations should make the humanitarian crisis in Somalia an item of high priority, working to coordinate and accelerate relief efforts;

(5) neighboring states should actively support and facilitate relief efforts through and from their territory; and be it further

Resolved, That—

(6) the President should actively explore possible United States initiatives to reconcile the conflicting factions and should encourage and support efforts by outside mediators;

(7) the Secretary-General of the United Nations and the President of the Organization of African Unity should work to resolve the conflict.

CONGRATULATIONS TO THE TOWNS OF DERBY AND ANSONIA, CT

The resolution (S. Res. 125) to extend congratulations to the towns of Derby and Ansonia, CT, on the occasion of the bicentennial of the appointment of David Humphreys as the United States first ambassador, was considered and agreed to.

The preamble was agreed to.

The resolution and the preamble are as follows:

Whereas on February 21, 1791, the Senate gave advice and consent to the nomination of David Humphreys as Minister Resident from the United States to her most faithful Majesty and Queen of Portugal;

Whereas David Humphreys was a Connecticut son, decorated patriot and close friend of George Washington;

Whereas this appointment served as the opening chapter of United States diplomacy (Minister Resident being the direct precursor of Ambassador), and more specifically, of the United States' longstanding and honored relationship with Portugal;

Whereas Mr. Humphreys was presented at the Court of Lisbon as the Minister Resident to Portugal on May 22, 1791; and

Whereas the citizens of the towns of Derby and Ansonia, which once comprised Mr. Humphreys' town of Old Derby, take special pride in their native son, and are celebrating this important bicentennial: Now, therefore, be it

Resolved, That the Senate extends congratulations to the towns of Derby and Ansonia, Connecticut, on the occasion of the bicentennial of the appointment of David Humphreys as the United States' first Ambassador.

ENCOURAGING A BAN ON DRIFTNETS FOR ALL EUROPEAN COMMUNITY FISHING FLEETS

The Senate proceeded to consider the resolution (S. Res. 144) to encourage the European Commission to vote to ban driftnets for all European Community fishing fleets on July 8, and for other purposes, which had been reported from the Committee on Foreign Relations with amendments.

Whereas the Convention for the Prohibition of Fishing with Long Driftnets in the

South Pacific, also known as the Wellington Convention, prohibits the use of a net or combination of nets longer than 2.5 kilometers in length which drifts on or in the water;

Whereas the United States domestic law prohibits the use of large-scale driftnets, which are defined as a gillnet or series of gillnets that have a total length of 1.5 miles (2.5 kilometers) or more;

Whereas United Nations Resolution 44/225 specifically calls for immediate cessation of expansion of large-scale driftnet fishing on the high seas;

Whereas the European Community cosponsored United Nations Resolution 45/197, which reaffirms United Nations Resolution 44/225;

Whereas the damage caused by the use of large-scale driftnets (2.5 kilometers or longer) on the high seas can be crippling to efforts to conserve fisheries within the exclusive economic zones of coastal States;

Whereas there are currently no effective conservation and management measures that will make large-scale driftnet fishing an acceptable fishing technology;

Whereas votes in the European Community and other regional fora to ban large-scale driftnet fishing are critical to the global effort to accomplish that goal;

Whereas the expansion of large-scale driftnet fishing by certain European Community fishing fleets on the high seas is in direct contravention of United Nations Resolutions 44/225 and 45/197; and

Whereas approval of the Fishery Council of the European Community's proposal to ban large-scale driftnets (2.5 kilometers or longer), which is scheduled to be voted on July 8, is critical to the success of the global fight to ban large-scale driftnets, and is therefore of extreme importance to the United States Government: Now, therefore, be it

Resolved, That it is the sense of the Senate that the Secretary of State, in cooperation with the Congress and other Federal agencies with competence over large-scale driftnet fishing, should communicate to members of the European Community the support of the United States to obtain an immediate ban on the use of all large-scale high seas driftnets or a combination of driftnets of 2.5 kilometers or longer by European Community fishing fleets.

The title was amended so as to read: "A resolution to encourage the European Community to vote to ban driftnets for all European Community fishing fleets on July 8 and for other purposes".

Mr. KERRY. Mr. President, I commend the adoption today of Senate Resolution 144, a resolution urging the European Commission at its upcoming meeting on July 8 to vote to ban the use of large-scale driftnets of 2.5 kilometers or longer by the European Community's fishing fleet.

Driftnet fishing is one of the most egregious fishery practices plaguing our seas. Entire marine ecosystems are being thrown out of balance because of the selfish, short-sighted fishing exploits of a handful of nations. At a time when many countries are attempting to halt this destruction in the North and South Pacific oceans, a new generation of driftnet vessels is showing up in the Atlantic and Indian Oceans. In the past, driftnetting was attributable to the greed of the South Koreans, Taiwanese and Japanese which far outweighed any conservation ethic. Today other fishing nations such as France, Britain and Ireland have decided they were missing out on a golden fishing opportunity and are expanding driftnet fishing into the Atlantic. The number of vessels deploying driftnets in the European Exclusive Economic Zone has increased from 16 in 1988 to 37 in 1989. Last year two Irish vessels and four vessels from the United Kingdom joined the fleet, and we can anticipate more in the future unless they are stopped.

Two years ago the United Nations passed resolution 44/225 which Senator STEVENS and I helped develop. This resolution specifically calls for the immediate cessation of the expansion of driftnet fishing on the high seas. The European Community, including France, Ireland and Great Britain, was supportive of the resolution and in fact cosponsored U.N. Resolution 45/197 which reaffirmed the need for U.N. Resolution 44/225.

Mr. President, for France, Great Britain and Ireland to suddenly expand their driftnet fleets, flies in the face of this U.N. resolution.

France and Britain argue that they are not violating the U.N. General Assembly resolution on driftnet fishing because in their view, the driftnets they use are not large scale. Mr. President, this could not be further from the truth. Officially these vessels use nets ranging from 2.5 to 7 kilometers in length. In my view that is certainly large scale, but, more importantly, under U.S. law, a large scale driftnet is defined as a gillnet or series of gillnets that has a total length of 1.5 miles which is approximately equal to 2.5 kilometers. And furthermore, under the Wellington Convention the use of drifnets or combinations of nets longer than 2.5 kilometers is prohibited. So for these European nations to contend that their nets are not large scale is basically absurd.

This assertion only serves to reinforce the notion that we need a global convention with uniform definitions specifying that using nets longer than 2.5 kilometers or 1.5 miles is unlawful.

On July 8 the European Commission Fisheries Council of Ministers will meet to vote on a resolution banning the use of high seas driftnets by all members of the European Community fishing fleet. It is my hope that the EC will adopt such a ban. An EC ban will strengthen the global effort to eradicate driftnets worldwide. And the resolution that we are introducing today seeks to send a message to the European Community that Congress feels very strongly about this issue.

In the past, driftnets fishing occurred in the North and South Pacific. These curtains of death have literally been strip mining our areas. The Wellington Convention has sought to eradicate driftnets beginning in the South Pacific and similar efforts are being made in the North Pacific. The reason for this is simple. During the fishing season today, more than 1,000 driftnet vessels from Japan, Korea, and Taiwan are deploying over 30,000 miles of nets each night in the North Pacific, totaling more than 1 million miles each year.

In the end, I am afraid this flagrant abuse to our fish stocks is going to remedy itself, because if the world continues along this wasteful course eventually there will be no fish left to catch. Scientists estimate that the oceans can only supply 100 million tons of fish a year. The world's fishermen already take over 85 million tons and continue to increase their harvests. The need for overall international fisheries management could not be more important than it is today.

Driftnets are indiscriminate, ensnaring thousands of dolphins, whales and sea lions and other marine mammals as well as killing hundreds of thousands of sea birds and nontargeted fish. Thirty to 50 percent of the catch is lost when the nets are hauled in, and one third of the fish brought aboard the vessel has no commercial value. This is a fundamental pirating of our seas.

The world's fishing nations have been irresponsible in permitting this wasteful and destructive fishing practice to continue. We must develop a world ethic to restore and manage valuable ocean resources and promote their sustainable harvest. Nations spanning the globe must regard our oceans as one single ocean resource for all to share. That means sharing in the responsibility to conserve this resource, by enforcing fishing treaties and international efforts.

Mr. President, this resolution is designed to convey to the European Community our strong belief that driftnets must be banned worldwide and I thank my colleagues for their support in this effort.

The amendments were agreed to.

The resolution, as amended, was agreed to.

The amendments to the preamble were agreed to.

The preamble, as amended, was agreed to.

The resolution, as amended, and the preamble, as amended, are as follows:

S. RES. 144

Whereas the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, also known as the Wellington Convention, prohibits the use of a net or combination of nets longer than 2.5 kilometers in length which drifts on or in the water;

Whereas the United States domestic law prohibits the use of large-scale driftnets, which are defined as a gillnet or series of gillnets that have a total length of 1.5 miles (2.5 kilometers) or more;

Whereas United Nations Resolution 44/ 225 specifically calls for immediate cessation of

expansion of large-scale driftnet fishing on the high seas;

Whereas the European Community cosponsored United Nations Resolution 45/ 197, which reaffirms United Nations Resolution 44/225;

Whereas the damage caused by the use of large-scale driftnets (2.5 kilometers or longer) on the high seas can be crippling to efforts to conserve fisheries within the exclusive economic zones of coastal States;

Whereas there are currently no effective conservation and management measures that will make large-scale driftnet fishing an acceptable fishing technology;

Whereas votes in the European Community and other regional fora to ban large-scale driftnet fishing are critical to the global effort to accomplish that goal;

Whereas the expansion of large-scale driftnet fishing by certain European Community fishing fleets on the high seas is in direct contravention of United Nations Resolutions 44/225 and 45/197; and

Whereas approval of the Fishery Council of the European Community's proposal to ban large-scale driftnets (2.5 kilometers or longer), which is scheduled to be voted on July 8, is critical to the success of the global fight to ban large-scale driftnets, and is therefore of extreme importance to the United States Government: Now, therefore, be it

Resolved, That it is the sense of the Senate that the Secretary of State, in cooperation with the Congress and other Federal agencies with competence over large-scale driftnet fishing, should communicate to members of the European Community the support of the United States to obtain an immediate ban on the use of all large-scale high seas driftnets or a combination of driftnets of 2.5 kilometers or longer by European Community fishing fleets.

Amend the title so as to read: "To encourage the European Community to vote to ban driftnets for all European Community fishing fleets on July 8 and for other purposes.".

MEASURE PLACED ON CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that H.R. 2280, the veterans health care amendments, just received from the House, be placed on the calendar.

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

MONTREAL PROTOCOLS RATIFICATION INQUIRY TO AMERICAN LAW DIVISION ON SEPARATION OF POWERS CONCERNS

Mr. MITCHELL. Mr. President, last month the Republican leader inquired about the possibility of scheduling the Montreal Protocols for action by the Senate. I indicated that I would take the request under consideration and respond to him at an appropriate time in the near future.

I wish to do so today to indicate some concerns of importance to the Senate which I believe need to be considered.

The Montreal Protocols involve international liability standards for international aviation. Both proponents and opponents of ratification seem to agree that the current standards under the 1920 Warsaw Convention and 1955 Hague Convention, as well as the interim 1975 Montreal Agreement for the United States, are inadequate. The difference is over whether the Warsaw Convention should be renounced and the United States therefore should seek a new system, or whether the protocols should be ratified as an overall, albeit perhaps imperfect improvement of the status quo.

In 1983, the Senate withheld consent to ratification of the protocols by a vote of 50 to 42, which lacked the constitutional two-thirds majority. What is different about the issue today is the supplemental compensation plan [SCP] that also is proposed as a condition of ratification.

As currently proposed, the SCP would be implemented under existing authority of the Department of Transportation. However, there is concern as to whether statutory authorization of a supplemental compensation plan should be required—in part because the Montreal Protocols reflect fundamental issues of American tort law and the SCP itself is unprecedented.

This concern raises questions about the Senate's institutional powers, which do not necessarily involve the merits of the Montreal Protocols themselves, but which I believe need to be carefully examined before the Senate makes a decision on whether or not to consent to ratification. On June 24, 1991, I wrote to the Chief of the American Law Division of the Congressional Research Service asking for legal analysis of these questions.

Mr. President, I ask unanimous consent that a copy of the letter be printed in the RECORD.

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

(See exhibit 1.)

Mr. MITCHELL. I have asked for a detailed and careful, but also expeditious examination of this institutional area of concern. I will not make any decision with regard to the protocols until I have had an opportunity to review a response from the American Law Division.

I do want to state that I have had some very good, productive discussions on the merits of the protocols with Secretary of Transportation Sam Skinner and both proponents and opponents of ratification.

In recent weeks, Secretary Skinner and others have been helpful to me in providing detailed responses to my inquiries about the protocols. Separate from the inquiry I have made to the American Law Division, I believe that the information they have provided should be considered carefully by all Members of the Senate.

I ask unanimous consent that copies of selected correspondence be printed in the RECORD in sequence at the end of my remarks.

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

(See exhibit 2.)

Mr. MITCHELL. The Montreal Protocols involve balancing a number of complex issues. I would ask all my colleagues to give them very careful consideration.

EXHIBIT NO. 1

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, June 24, 1991.

Mr. RICHARD C. EHLKE,
Chief, American Law Division, Congressional Research Service, Washington, DC.

DEAR MR. EHLKE: The Montreal Aviation Protocols currently are pending on the Senate calendar. As part of my review of the Protocols in anticipation of a scheduling decision, I am concerned about the legal authority for the supplemental compensation plan (SCP) upon which the proposed ratification of the Protocols would be conditioned.

I have reviewed the January 25th memorandum from the American Law Division contained in Appendix III of the Senate Foreign Relations Committee Report (Exec. Rept. 102-1) which discusses the existing authority of the Department of Transportation to implement the SCP without additional legislation by Congress. However, I am concerned less with whether Congressional legislation is necessary as with whether statutory authorization might be appropriate or advisable under the circumstances.

The Protocols reflect fundamental issues of American tort law, and the Department of Transportation has acknowledged that the proposed SCP is unprecedented. There may be advantages of flexibility in relying on administrative authority for the SCP; however, because ratification would be conditioned upon its implementation, I also am concerned about implications for the institutional separation of powers that might occur if the Senate relies on the Executive Branch to fashion the SCP's specific provisions.

I would be interested in any observations or analysis which you might offer relative to these concerns. I also request opinions on the following specific questions:

1. What precedents exist for the Senate giving consent to ratification of treaties and protocols in which ratification is conditioned on additional agency actions? How is the proposed ratification of the Montreal Protocols similar or different?

2. If the Senate consents to ratification of the Protocols as currently proposed and the Department of Transportation implements the SCP under its existing authority, causing the Protocols to become effective—would Congress retain the power to statutorily authorize (and perhaps amend) the SCP at any later time?

3. If the Senate consents to ratification of the Protocols and the Department of Transportation implements the SCP, causing the Protocols to become effective—would the Senate have an ability at any later time to seek to renounce the Protocols and/or the original Warsaw Convention?

4. Under the proposed resolution of ratification (Exec. Rept. 102-1, p. 20), "the President shall give notice of denunciation of these Protocols if, at any time after their entry into force for the United States, he determines that a satisfactory supplemental plan as periodically reviewed by the Secretary of Transportation in light of new economic or other relevant circumstances, is not in operation for the United States." In light of this provision, what would be the effect of any invalidation of the SCP by a court of law or an abandonment of the SCP

by the Executive Branch at some future date? Could an obligation of denunciation be enforced judicially and who might have standing to do so?

I ask for your careful and detailed, but also expeditious attention to these concerns. Please contact Bob Carolla of my staff at 224-5344 if any additional information is required. Thank you for your assistance.

Sincerely,

GEORGE J. MITCHELL.

EXHIBIT 2

MONTREAL PROTOCOLS STATEMENT (AS INDICATED IN TEXT)

Insert 1:

June 24th letter to American Law Division

Insert 2:

a. March 21st letter from Secretary of Transportation.

b. April 24th letter with comments from Association of Trial Lawyers of America (ATA).

c. May 14th memorandum from aviation trial lawyers Michael Olin and Aaron Podhurst.

d. May 20th letter from counsels to International Air Transportation Association (IOTA) and Air Transport Association of America (ATA).

e. June 5th memorandum from Assistant General Counsel for International Law, Department of Transportation.

THE SECRETARY OF TRANSPORTATION,
Washington, DC, March 21, 1991.

Hon. GEORGE J. MITCHELL,
Majority Leader,
U.S. Senate,
Washington, DC.

DEAR MR. MAJORITY LEADER: Thank you for your letter of February 28, requesting answers to several questions concerning the Senate ratification of the Montreal (Warsaw) Protocols, and the proposed Supplemental Compensation Plan. Our responses to your questions are enclosed.

Please let me know if we can be of any further assistance.

With best regards.

Sincerely,

SAMUEL K. SKINNER.

RESPONSES TO QUESTIONS

1. Question: The Montreal Protocols establish a strict liability system for international air carriers. As you know, the Congress has to date refused to ratify the liability regime established under the Oil Spill Protocols because of their preemption of Federal and State laws and their insulation of potentially responsible parties from liability. How are the Montreal Protocols similar or different?

Response: Although both sets of protocols are based on strict but limited liability, the Montreal Protocols differ from the Oil Spill Protocols in a number of important respects.

The debate over the Oil Spill Protocols was not about the efficacy of our domestic legal system in dealing with oil spills within U.S. waters (although the identity, availability, and financial responsibility of the spiller remain major concerns), but rather about whether the application of domestic law would, by imposing unacceptable financial risks on tanker operators, impede the delivery of oil to our shores. Alternatively, the financial exposure associated with the application of domestic law might lead to an intentional fragmentation of the tanker industry into a great many one-ship companies each of which would be incapable of satisfying claims arising as the result of a spill.

The Montreal Protocols, on the other hand, are designed to remedy acknowledged limits on the ability of our domestic legal system even to entertain cases arising as the result of international air mishaps. That is, while the oil spills of primary concern to Americans are those that occur within U.S. waters, and therefore within the jurisdiction of our domestic legal system, international aviation accidents affecting U.S. citizens can occur in the jurisdiction of any country in the world. The law that may be applied in many cases would not be U.S. law. Access to U.S. courts may also be questionable.

APPLICATION OF FOREIGN LAWS

U.S. citizens may fare very badly under foreign laws, particularly if forced to bring an action in foreign courts. Even if the United States were no longer a party to the Warsaw Convention, the Warsaw limits of $10,000-$20,000 might nevertheless be applied to a U.S. citizen who traveled on a foreign air carrier between two foreign points. Even where a U.S. court asserts jurisdiction and applies U.S. law, the expense, difficulty, and time associated with the required litigation would detract substantially from the real value of any ultimate recovery.

2. Question: What precedents exist for the proposed supplemental compensation fund? Why should statutory authorization be unnecessary?

Response:

PRECEDENT FOR MANDATED INSURANCE REQUIREMENTS

There is no specific precedent for the Supplemental Compensation Plan—a system for ensuring unlimited recovery of damages by U.S. citizens regardless of the circumstances surrounding an international aviation accident. On the other hand, there is substantial precedent for the essential elements of the Plan—for the collection of passenger surcharges, and for requiring participation in a carrier agreement affecting passenger liability.

Surcharges to cover specific airline costs are not a new concept. When the hijacking threat required new FAA standards of security, the Civil Aeronautics Board specified and approved a maximum passenger surcharge to cover these added costs. See, CAB Order 74-9-82. The Department of Transportation also recently approved a surcharge to cover the increased cost of insurance resulting from Iraq hostilities in the Persian Gulf (Order 90-9-44), as well as surcharges to offset substantial fuel cost increases (Orders 90-9-43, 90-9-44, 90-12-21, and 90-12-56). Moreover, the Civil Aeronautics Board frequently permitted special costs for operations to be reflected in higher charges under airline tariffs. See, e.g., increased fuel costs, Orders 73-3-63, 74-3-63, 74-7-141.

In 1966, the Civil Aeronautics Board was instrumental in bringing about an agreement among all of the airlines, U.S. and foreign, that fly between the U.S. and foreign points. That accord—the so-called "Montreal Agreement"—waives the Warsaw liability limits up to $75,000, and accepts strict liability. The Department currently requires that all U.S. and foreign air carriers be parties to that Agreement (14 CFR Part 203).

DOT STATUTORY AUTHORITY

The Department of Justice and the Congressional Research Service have both confirmed that the Department of Transportation (DOT) has ample existing statutory authority to implement the proposed Supplemental Compensation Plan (SCP). It may do so through an approval (and or conditioning) of the Air Carrier Agreement providing for the Plan, by review of subsequently filed tariffs implementing the provisions of the Agreement, and by adoption of regulations requiring all air carriers and foreign air carriers to participate in the Plan. See, Exec. Rept. 102-1, Senate Foreign Relations Committee, 102d Cong., 1st Sess., February 5, 1991, App. III, pp. 69-73.

It should be noted that the adoption of the existing Montreal Agreement in 1966 under this same basic statutory scheme has never been challenged. The Montreal Agreement, which effectively raised the limit of carrier liability to $75,000 and adopted a regime of strict liability, was proposed by carriers and approved by the Civil Aeronautics Board, the predecessor of the DOT. CAB Order E-23680 (May 13, 1966), 31 Fed. Reg. 7302 (May 19, 1966). Participation in that Agreement was made mandatory for all U.S. carriers and foreign air carriers by regulation. 14 CFR Part 203.

3. Question: The supplemental compensation plan will be required to provide for compensation not less than $500 million per aircraft per incident. In effect, however, this amount may serve as a limit on the total compensation available under the plan. Although the $500 million may be periodically increased, can increases be applied on an *ex post facto* basis to any particular incident?

Response: There has never been an accident in which total recoveries attributable to the passengers on board a single aircraft have approached $500 million.[1] The figure is included in the Plan only to create an "insurable risk", an element that enables the insurance industry to gauge its maximum exposure for the purposes of establishing costs. The figure applies to each aircraft in a given incident, which means that in a collision of two aircraft, the maximum available would be $1 billion. Thus, it would not operate, as a practical matter, as a limitation on individual recoveries.

The Plan would not permit a higher cap to be applied retroactively. On the other hand, the Plan provides that the per occurrence amount should be "not less than" $500 million. The figure may well be higher from the outset. Should it appear in the administrative proceeding through which DOT will review and grant final approval to the Plan that this amount could potentially limit the recoveries of individual passengers, we will require that the figure be increased. Moreover, we will monitor the operation of the Plan and will be in a position to require increases at any time, should rising recovery levels warrant.

4. Question: The supplemental compensation plan is to be funded through a $2-$3 surcharge on airline passenger tickets. Will this surcharge be applied to all passengers on all airline flights? What increases in the surcharge might be expected over time?

Response: The passenger plan surcharge would be collected only from passengers—U.S. and non-U.S. citizens—whose journey originates in the United States. Thus, no surcharge would be collected for a passenger departing the United States on a return seg-

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[1] The highest recovery we are aware of to date was $400 million in the Japan Air Lines Mount Fuji crash, involving approximately 500 passengers on a single aircraft. The highest per aircraft total of recoveries for a U.S. carrier was about $200 million. It should be noted, in this connection, that a portion of the passengers on any international flight would be non-U.S. citizens whose journeys did not originate in the United States. Those non-U.S. citizens would not be covered by the Plan, and hence their recoveriers would not come out of the Supplemental Compensation Plan (*i.e.*, would ot be charged against the $500 million).

ment of a round trip ticket, regardless of nationality. (The initial origin and ultimate destination of a journey would be determined from the passenger ticket.) While no surcharge would be collected from a U.S. citizen whose journey originates from a point outside the United States, whether the destination is in the U.S. or in another foreign country, the U.S. citizen would still receive the benefits of the Plan. In other words, there is no link, for U.S. citizens, between the collection of the surcharge and receipt of the benefits of the Plan.

While it is not possible to predict with accuracy whether the surcharge amount would increase or decrease, the progressive improvement in the carriers' safety record has kept U.S. airline insurance costs relatively low, and can be expected to result in a diminution in the surcharge over time.

There are several points which may be kept in mind in considering insurance costs:

The contract will be entered into only after a wide competitive solicitation from the insurance industry to assure that the lowest costs available will apply.

The initial and any change in the costs of the Plan will be reviewed by the Department before taking effect. If there should be any significant difference between an increase in the Plan's costs and the cost of insurance generally available to U.S. carriers, the Department would require a thorough justification, and would disapprove or condition the Plan if such justification were not satisfactory.

Over the long term, the Department would require a reasonable relationship between the payout under the Plan and the surcharges collected.

5. Question: Is it possible to shift the cost of funding the supplemental compensation plan from passengers to airlines or other sources?

Response: Under any system of liability covered by insurance, whether established under the Protocols and Supplemental Compensation Plan, or under insurance secured by the airline on its own behalf, the passenger ultimately bears the costs. Even domestically, where the Warsaw Convention does not apply, airlines are required to be insured by Part 205 of the Department's Regulations (14 CFR Part 205). The costs of this insurance are paid for by the passenger through the price of the airline ticket in the same manner as any other costs of the airline in providing air transportation services. Section 3.2 of the Plan requires that the surcharge "shall be a part of the advertised ticket price." As such, there is no real distinction between insurance costs normally included as part of the ticket price and a surcharge which is "a part of the advertised ticket price."

6. Question: Under the Portocols, how will airline accountability for aviation safety be ensured?

Response: The Federal Aviation Administration's regulation of the safety and security of airlines has resulted in a consistently impressive safety record, and one which has improved steadily over the years. Moreover, the U.S. is the recognized leader in establishing a very high worldwide level of aviation safety through its work in the International Civil Aviation Organization. Foreign carriers must adhere to ICAO standards in order to operate to the United States.

The consequences to an airline of any relaxation of safety-related measures are extremely severe. Deviation from FAA safety requirements puts the airline's right to do business in jeopardy. Further, airlines can expect to suffer substantial revenue losses following an accident. Concern about these consequences far exceeds any incentive arising from liability exposure.

As noted in the 1991 Senate Foreign Relations Committee Report, studies by the General Accounting Office, Rand and Clemson University confirm that increased liability exposure does not have an appreciable impact on airline safety. First, all airlines carry insurance against liability exposure at levels far above the Protocol limitations. Further, parties other than the airline would remain liable under the common law negligence liability system. Thus, to the extent that complex aviation litigation is considered to serve a useful function in disclosing safety breaches, litigation pursuant to the third party subrogation rights of the Supplemental Plan Contractor would fulfill that function.

7. Question: In our discussion, reference was made to increased travel by Americans on foreign carriers as part of our international economy, and the fact that those travelers may lack legal protection. How many Americans are estimated to travel abroad on foreign carriers? How many foreign carriers—or which carriers in which countries—might not be subject to U.S. legal jurisdiction?

Response: The point that I was trying to make is not tied to historic figures on how many U.S. citizens travel on foreign airlines. Rather, it is that as U.S. business becomes increasingly international (and it must if we are to remain competitive), more and more U.S. citizens will be travelling abroad on journeys that do not begin or end in the United States. Regardless of whether they are flying on U.S. or foreign airlines, these people will likely be beyond the reach of the U.S. legal system, either in terms of U.S. court jurisdiction over the carrier, or in terms of a foreign country's law being applied to their case in a U.S. or foreign court. To leave our citizens unprotected in these circumstances is, in our view, unconscionable.

We do not have figures on Americans traveling on foreign carriers between two foreign points. For travel to and from the U.S., however, Immigration and Naturalization Service Data show that of the 38.6 million U.S. citizen passengers flying abroad (excluding Canada) for the 12-month period ended September 30, 1990, 16.6 million U.S. citizens, or 42.9 percent, traveled on foreign air carriers. For the five calendar years 1985 through 1989, an annual average of 32.7 million U.S. citizens traveled abroad (excluding Canada), of which an annual average of 14.8 million, or 45.3 percent, traveled on foreign carriers. For such trips, of course—to and from the U.S.—both U.S. and foreign carriers are subject to the same legal regime.

8. Question: What will be the consequences if the Senate rejects the Protocols? What alternatives exist to the existing Warsaw Convention?

Response: If the Senate rejects the Protocols, the United States would certainly have to consider denunciation of the Warsaw Convention. Continuation of the current $75,000 limit applicable for journeys to and from the United States is clearly unacceptable for any substantial period of time. Renegotiation of the Protocols would be such a time consuming process, with the outcome so uncertain, that it is unlikely to be a practical solution.

Adoption of a new Montreal Agreement type arrangement (thereby increasing the liability limit for trips to and from the U.S. to a level higher than $75,000), while perhaps possible, would leave the $10,000-$20,000 limits applicable to most journeys between foreign points, and would not be likely to provide for unlimited liability as provided under the Protocols and Supplemental Compensation Plan.

If we did denounce the Convention, U.S. citizens in some cases would be able to establish jurisdiction in U.S. courts and have access to damages without limitation, which would depend on their ability to provide fault. (There might be no fault, however, in cases involving, for example, terrorist acts or acts of war.) But such cases, even if ultimately successful, would be subject to extensive litigation concerning proof of fault, and extremely complex litigation over the application of conflicts of laws principles.

For a U.S. citizen traveling between two foreign points on a foreign airline, the application of U.S. law which would provide for unlimited liability would be questionable, and access to U.S. courts might be very difficult where travel was on a foreign airline not operating to the U.S. If we denounced the Warsaw Convention, foreign airlines not operating to the U.S. might well revise their interline arrangements to avoid an agency relationship which would subject them to U.S. law. Some foreign governments might go so far as to adopt laws to protect their airlines from the unlimited liability exposure in the U.S.

THE ASSOCIATION OF
TRIAL LAWYERS OF AMERICA
Washington, DC, April 24, 1991.

Hon. GEORGE J. MITCHELL,
Senate Russell Office Building, Washington, DC.

DEAR MR. MAJORITY LEADER: Thank you for sharing with us Secretary of Transportation Skinner's response to your letter of February 28 and for giving us an opportunity to comment on that response. ATLA deeply appreciates your interest in our views and, as always, we want to be of maximum assistance to your office and to the Senate as it renews its consideration of the Montreal Protocols.

There are a number of issues raised by Secretary Skinner that command our attention; we hope that this letter will fully respond to those issues. Frankly, however, it would be difficult to comment seriatim on the full response of the Secretary to each of the eight questions posed by your February correspondence. Matters relating, for example, to issues such as the Oil Spill Protocols or the number of Americans estimated to travel abroad or the airlines' and the Administration's expectations regarding future increases in the passenger surcharge are either outside the area of our primary expertise or call for judgments that might be presumptuous on our part. Still, we hope these comments will contribute constructively to a better understanding of the debate.

I.

Beginning with the Secretary's response to your first question, without commenting on the Oil Spill Protocols, we are struck by the contention that the Montreal Protocols "are designed to remedy acknowledged limits on the ability of our domestic legal system even to entertain cases arising as a result of international air mishaps." Our domestic legal system is not the issue. The law of liability in international air transportation is governed by an existing international treaty presently in force, the Warsaw Convention. The limits intended to be remedied by the Montreal Protocols are the liability limits imposed by that Convention, not by domestic law.

The Warsaw Convention, ratified by the Senate in 1929, formulated a system of liability limits designed to protect the then infant airline industry. The liability of a commercial carrier for a disaster in international aviation was limited to $10,000 per passenger, an amount subsequently increased to $75,000 per passenger by an inter-carrier agreement when the United States threatened to renounce the Convention in 1966. Although the $75,000 limitation is presently in force, under the existing Convention an airline is liable for provable damages—without limitation—upon proof of willful misconduct. There would be no such liability under the Protocols. The Senate can assess the Protocols, then, only in the context of the Warsaw Convention; the Secretary cannot pretend the issue is the domestic civil justice system.

Is it a good idea to perpetuate an outdated, sixty-year-old treaty or would ratifying the Protocols, as Senators Biden and Simon have concluded, "cement in place a defective system and worsen it by eliminating any opportunity for fault based litigation?"

II.

Secretary Skinner's response to your second question, regarding the necessity of statutory authorization for the proposed Supplemental Compensation Plan, is also of concern and seems to raise as many questions as it resolves. The Secretary himself acknowledges "(t)here is no specific precedent for the * * * Plan." Frankly, we are not entirely comfortable with the view that there presently exists clear and ample statutory authority for the Department of Transportation to implement the proposed Plan. Although we are aware that the Justice Department has concluded that such authority exists, a case can be made that reliance on Section 412 of the 1978 Airline Deregulation Act, without more, as a basis for that authority, is a questionable interpretation of Congress' intent. Still, even if Secretary Skinner is correct, even if there in fact exists an adequate existing delegation which would allow D.O.T. to implement the Plan without additional authority, we do not believe it would be prudent for the Senate to permit that result. The issue must not be solely: Is statutory authorization necessary; it also must be: Is statutory authorization wise and prudent and in the best interests of the American travelling public.

Given the limitation on the rights of American citizens that would be imposed by ratification of the Montreal Protocols, and given the recognized and admitted insufficiency of the compensation provided under the Protocols, there is now universal agreement (including by the Secretary of Transportation) that the Protocols should not become operative—even if agreed to by the Senate—unless a Supplemental Compensation Plan is in place and in force. To ensure the implementation of a satisfactory plan and to guarantee that it continues to provide sufficient levels of compensation, mere reliance on the good faith and good will of the commerical airline industry is not enough. Nor is that an acceptable exercise of the Senate's responsibility to the American flying public. As an alternative, the Senate cannot comfortably delegate to the Secretary of Transportation and to the President its own authority in this matter to safeguard the best interests of American passengers—especially at a time when the Senate is being asked to ratify a treaty that restricts passenger rights. Instead it should insist that as a condition for depositing the instruments of ratification, a Supplemental Compensation Plan must first be statutorily enacted.

The Secretary's responses to other of your questions further underscores our concern. In responding to question four, Secretary Skinner makes clear his understanding that the passenger surcharge envisoned by the Plan may increase from time to time and that "it is not possible to predict with accuracy" the future cost of the Plan to the travelling public. Perhaps more troubling even than the lack of any assurance regarding the cost of the Plan is the absence in the Plan of any guarantee as to its continued level of covered damages. It cannot be enough for the Secretary of Transportation, the President and the airlines simply to say: "Trust us." The Resolution of ratification itself would permit the Secretary of Transportation to review the Supplemental Plan at any time "in light of new economic or other relevant circumstances."

We find it instructive also that in responding to question three, the Secretary makes the point that even the 500 million dollar per aircraft per incident limitation may be increased by the Department if it concludes that in the future such an increase is warranted. Why should the Senate remove itself from that determination?

III.

Finally, we are left with the haunting question posed in number six—that is, the relation between the Protocols and an airline's accountability for aviation safety. It is the question itself, really more so than the particulars of any response, including Secretary Skinner's, that must profoundly engage the Senate. The history of civil litigation (as well as common sense) informs us that it simply is not credible to suggest that exposure to liability has no impact on product safety, or in this case on airline safety. And make no mistake: above what even the Secretary concludes is insufficient compensation of $130,000 per passenger, the Montreal Protocols would provide an absolute and unbreakable limitation on an air carrier's liability—an exemption, really—from responsibility no matter how gross its misconduct.

The notion that people and institutions are individually accountable and responsible for their behavior and for the harm they cause is not only a bulwark principle of our jurisprudence, it is a hallmark of our free society. The Protocols, however, would relieve the airlines of responsibility and at the same time impose upon the flying public the cost of funding that special relief. At best, the Senate should think long and hard before bringing about that result. Or, it may be as Senators Biden and Simon have already concluded: "There is no justification for limited liability of airlines in this day and age."

Again, Mr. Majority Leader, thank you for your many courtesies and for the opportunity to express our views. We look forward to working with you and with your office in whatever manner you feel would be helpful.

Sincerely yours,

MICHAEL MAHER.

MAY 14, 1991.

MEMORANDUM

To: Senator George Mitchell, Attention: Robert Carolla.

From: Michael Olin/Aaron Podhurst.

Re: Montreal Protocols with Proposed Supplemental Compensation Plan.

The current Warsaw Convention/Montreal Agreement framework within which personal injury and wrongful death claims arising out of international air transportation are resolved is antiquated, inadequate, and frankly, unconscionable. The existing framework provides absolute liability up to $75,000.00 for any "accident".[1] Any claimant who desires to recover more than $75,000.00 must prove that the carrier was guilty of "willful misconduct." As is obvious, in most carrier crashes the passengers are killed and the $75,000.00 limit is ridiculously low. Even if the air carrier's misfeasance has caused the crash, liability is limited to $75,000.00, unless the passenger can leap the higher hurdle of "willful misconduct."

The current impetus for change, then, is occasioned in large part because the current Warsaw framework is so bad. But frankly, U.S. renunciation of the Warsaw Convention/Montreal Agreement, as occurred in 1965 (when the limit of liability was even lower) is preferable to the instant proposal. Although such renunciation would still leave gaps in the ability of American citizens to recover against foreign air carriers in certain circumstances, those circumstances are fairly limited, and are not within the purview of the current framework anyway.[2]

For example, the claims of American citizens living overseas injured or killed in a crash between two foreign countries are not now governed by the Montreal Agreement. The proposal under consideration would provide first party insurance for such claims. But the benefits of including this new type of claim in the first party insurance pool may be illusory anyway, given the fact that foreign substantive law is likely to apply to such claims under section 2.5 of the proposal (more on this later), and that such law is probably not as equitable as American wrongful death provisions. In other words, the carrot of expanding the scope of covered claims is really a mirage, and should not be viewed as an incentive to enact a poorly drafted scheme of compensation for the vast majority of claims which arise out of traditional Warsaw Convention/Montreal Agreement circumstances where there was a scheduled departure, stop, or arrival in the United States. Even with all of the Warsaw Convention's pitfalls, most victims are ultimately able to obtain reasonable recoveries. So while the best scenario may be to renounce Warsaw, the worst is to adopt this proposal. The middle ground is to defeat the proposal, and live with the status quo.

The current proposal essentially provides a form of first-party insurance to travelers in international or foreign air transportation. Opposition to this proposal arises from the fundamental notion that people should be individually responsible for harm that they cause. In other words, tortfeasors should be accountable and responsible for their ac-

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[1] "Accident" was defined in AIR FRANCE versus SAKS, 470 U.S. 392 (1985) to mean any "unexpected or unusual event or happening that is external to the passenger." It has been held to include injuries in the course of hijack attempts, and arguably would include even one passenger spilling soup on another.

[2] The current framework is, of course, the Warsaw Convention of 1929 (adhered to by the U.S. in 1934) with the added benefits of the Article 22 (1) authorized Montreal Agreement of 1966. The proposal under consideration requires, as a condition precedent to adoption of the Supplemental Compensation Plan, that the U.S. ratify Montreal Protocol 3, written in 1975. This protocol includes provisions from the 1955 Hague Protocol and 1971 Guatemala City Protocol, which heretofore have not been adopted by the U.S. Adopting Montreal Protocol 3 now raises the $75,000 limit to $130,000, and incorporates section 35A (referenced in the preamble to the Supplemental Compensation Plan) into the existing framework. Section 35A precludes the airlines from paying for the additional insurance mandated by the Supplemental Compensation Plan.

tions. This notion forms the bulwark of America's tort system, and passage of the proposal under consideration simply eliminates it. The proposal provides for absolute liability on an air carrier up to $130,000.00 for any "accident," whether it is the carrier's fault or not, and then shifts responsibility for any excess damages suffered by passengers to the passengers themselves, who are required to buy insurance at fixed rates but with uncertain benefits.

For Congress to approve a no-fault plan on the basis that the injured shall pay for their own damages caused by a wrongdoer breaches every fundamental concept of American jurisprudence. Such a proposal violates all of the primary and paradigmatic concepts of the American tort system. Allowing such a notion to pass here would be but the first brick in the wall. Next, no doubt, will be attempts to expand the concept to all domestic travel,[3] then to other areas of law like products liability, medical malpractice, etc. This is simply another attempt to expand the notion of "no fault," which should not be countenanced simply because the existing Warsaw system is so bad.[4] Indeed, to favor this proposal, or accept it voluntarily, is to enhance the possibility of the destruction of the tort system.

With that background in mind, what follows are specific comments on the individual sections of the Supplemental Compensation Plan.

Section 1. Definitions:

Subsection 1.5.

This section defines a carrier as "any entity that undertakes directly to carry persons as a common carrier for compensation or hire." This should be read in its general sense, not its specific sense. In other words, the question is not whether on a particular flight the carrier has received compensation, but whether the carrier generally receives compensation. What if, for example, a carrier offers a free promotional flight or a sweepstakes flight, and the winner is injured? Such a person should be covered under the Plan, which requires that this definition be read "generally."

Subsection 1.11.

This section expands the scope of claims covered beyond those presently governed by the Warsaw Convention/Montreal Agreement because it also covers cases arising in foreign air transportation. See page 2, supra. It does not provide for punitive damages, and "appears" to provide for all compensatory damages, both economic and non-economic. This apparently "enhanced" damage provision, however, is somewhat illusory, as will be discussed later.

Subsection 1.12.

As previously mentioned, coverage is broader in some respects than under existing law. However, this definition would not cover non-U.S. citizens who are visiting the United States. In other words, a British citizen who is killed on either a London-New York, or New York-London flight is not a "covered person," and would be left to his existing remedy under the current Warsaw Convention/Montreal Agreement. This means that in the Lockerbie cases, for example, all U.S. citizens would be covered under the plan, but all British citizens who were beginning their trip would not, and that there cases against the carriers would be filed and would proceed under the provisions of the existing Warsaw Convention/Montreal Agreement.

Section 2.1 Liability of Contractor.

Under this provision, the contractor is liable for "an event." This apparently refers to §2.3 (c) which states that the contractor is not liable unless an action can be sustained by the claimant against the carrier under the Convention. And as previously noted, the convention requires an "accident."

The $500,000,000.00 minimum limitation is quite troubling for reasons discussed later.

Sub-section (b) of Section 2.1 is also troubling. It provides that the liability of the contractor shall not be affected by the insolvency of the carrier. But how, for example, does this provision relate to a Chapter 11 Bankruptcy filing and the stay provisions of the Bankruptcy Act? In other words, if the liability of the contractor is contingent upon the carrier's tender of the first $130,000,00, and the carrier files Chapter 11 proceedings resulting in an automatic stay, won't actions against the contractor be unnecessarily delayed? The plan does not provide for a means of addressing potential delay from a Bankruptcy filing. As experiences in the Lockerbie cases indicate, even the existence of $750,000,000.00 in insurance has not enabled the claimants to obtain complete relief from the Bankruptcy stay, at least not yet. Indeed, existence of the bankruptcy proceeding has allowed Pan Am to misuse the Bankruptcy Act for purposes unrelated to protecting the bankruptcy estate. Thus, while this provision provides that the liability of the contractor shall not be affected by the insolvency of the carrier, the procedural impediments that such a bankruptcy filing throws in the way of moving the claims forward are significant.

Section 2.2. Conditions.

The very specific provisions requiring claimants to cooperate with an insurance carrier provide a source of great difficulty. This one is only the first of several such provisions found in the plan. Experience teaches that where insurance policies require this level of cooperation, it essentially gives the insurance carrier carte blanche to make whatever demands it wants, even unreasonable demands, on claimants before the insurer is obligated to do anything. The more provisions in an insurance policy that talk about these types of conditions precedent, the more likely a Court will find that a claimant, either inadvertently or from lack of ability, did not comply. Indeed, what happens if a Court rules that a claimant has not complied with these conditions? Is the claimant's claim barred in its entirety? Can the claimant still proceed against the carrier? This type of provision is an invitation to the insurance company to delay resolution of claims and abuse claimants.

Sub-section (b) provides that the contractor is not liable unless the carrier would be responsible under the terms of the existing Warsaw Convention/Montreal Agreement. As we know, however, current law provides that the carrier's fault or not. This, of course, at least challenges the assertion made by some that the carrier's continued responsibility for the first portion of the damages provides a sufficient incentive to the carrier to be careful and safety conscious. If the carrier is absolutely liable, whether it is the carrier's fault or not, the carrier's "safety consciousness" will be governed by factors other than its liability for the first $130,000. Abolition of the Warsaw Convention/Montreal Agreement, however, *will* provide true accountability under American tort law, as could an Article 22(1) agreement as referenced in footnote 4.

Sub-section (c) seems overly broad. It provides that the claimant shall assign to the contractor any recovery or right of recovery for covered damages from any other potentially liable party. The way that this is phrased, it could be construed to include other first-party insurance benefits that the claimant might have, such as life insurance, health insurance, or disability insurance. It ought to be made clear that the type of recovery rights that are to be assigned are those that the claimant has *in tort*. In other words, if a claimant is wise enough to have other first-party insurance benefits available to him, the contractor should not be able to assume those rights.

Section 2.3. Limitations.

Sub-section (a) provides that no claimant shall have the right to contest the contractor's evaluation of a claim made by any other claimant. In the usual case, this is not a problem. What happens, however, if the total claims exceed $500,000,000? In that instance, every claimant has an interest in what every other claimant might get, and indeed the plan provides for a declaratory action in the District Courts for the District of Columbia, to determine this allocation. This appears to be an internal inconsistency.

Sub-section (d) of Section 2.2 raises the question of the appropriate statute of limitations in "foreign air transportation." Traditional Warsaw Convention/Montreal Agreement claims are subject to a two year statute of limitations. But what about a U.S. citizen traveling from France to Yugoslavia, i.e. "foreign air transportation" as defined by the plan? Do we know what that statute of limitations is? Do we want to provide that claims arising in "foreign air transportation" are governed by the two-year statute of limitations under the Warsaw Convention?

Section 2.4. Exclusions.

This memo will make no attempt to address the policy arguments for and against the allowance of punitive damages. The authors believe that they serve a salutary purpose, borne out by history and recently affirmed by the Supreme Court. Space does not allow repetition of that discussion here. The Second Circuit and the Eleventh Circuit have now concluded that the Warsaw Convention does not allow punitive damages. This is not, however, to say that that will become the law of the land, particularly in light of the last two Supreme Court cases on punitive damages holding that neither the 8th Amendment nor the due process clause serve as an impediment to such awards. Note that the abolition of punitive damages here extends beyond Warsaw Convention cases because the proposal itself, as previously noted, extends beyond Warsaw Convention claims, and indeed, may encompass claims where punitive damages *are* now available.

Subsection (b) of Section 2.4 is a disaster. This provision eliminates any possibility of a bad faith claim against the contractor. In other words, the contractor is free to act in

[3] The domestic carriers will no doubt decry, "why should we be penalized for flying domestically? We have to pay for our own insurance and assume our own risks, and international carriers are allowed to shift this risk to the passengers themselves. Our balance sheet simply cannot afford it!"

[4] Please note in passing that there is no good reason why the carriers cannot pay directly for this insurance. As noted above in footnote 2, if the Montreal Protocols are not adopted, there is no reason why the carriers can't be required to buy the additional liability insurance needed to fund a Supplemental Compensation Plan. Such a requirement could be imposed under the same provision that authorized the 1966 Montreal Agreement—the Article 22 (1) special contract clause. This scenario would leave the carriers absolutely liable up to $75,000 for any "accident," but liable for any excess on the basis of traditional fault notions. This alternate scenario is but one of many that could be devised to provide equitable and fair relief to the victims of international air travel accidents.

bad faith in handling the claim, in delaying the claim, in failing to settle the claim, and its only responsibility will ultimately be to pay the claim. Because the attorneys' fee provision found later in the proposal is illusory (there is no real liability or potential liability for attorneys' fees) and the plan does not provide for pre-judgment interest, the contractor will have no real incentive to settle early. This means, in effect, that there will be no early settlements unless the contractor can get one cheaply i.e., for far less than the claim is worth. Addition of a provision requiring payment of prejudgment interest or imposing a duty of good faith (like Fla. Stat. §624.155, copy attached) would ensure that the contractor has an appropriate incentive to promptly and fairly settle all claims.

Section 2.5. Choice of Law.

This is one of the most interesting provisions of the plan. First, query what the phrase "to the extent consistent with the Convention in this Plan" adds to the section. The section appears to read the same without that phrase.

Second, this section belies the assertion that the plan provides for unlimited economic and non-economic damages, because it appears to refer to ordinary choice of law provisions currently utilized in actions brought under the Warsaw Convention/Montreal Agreement. This means, for example, that in those cases arising in foreign air transportation (such as a claim arising out of an accident on a flight from Paris to Luxembourg), ordinary choice of law rules will govern the damage remedies. In other words, the claimant will probably end up with the application of foreign law anyway. This is why the provisions previously noted about unlimited liability for economic and non-economic losses are, to some extent, illusory. What, for example, if French law provides caps on damages or, like some foreign countries, caps and limitations that are unrealistic when applied to U.S. citizens? This is particularly true in Central and South American countries where damage caps can be as low as a few thousand dollars. Nothing in this choice of law provision allows the claimant to avoid the application of such unreasonable limits to his case. The proposal merely removes the "artificial" $75,000 (raised to $130,000) cap, but still refers for substantive damage purposes to local law. Some local law, like Florida's in some cases, may be acceptable; some local law may not.

This provision also does not appear to address the issue of whether the Warsaw Convention creates its own damage law. We now know that most Courts are holding that the Warsaw Convention does create an independent cause of action. Indeed, some Courts have held that that cause of action is exclusive. Will there be a burgeoning federal law of damages in Warsaw Convention cases like there is in admirality? And if so, how does that fit into the puzzle? Will that federal law of damages be limited to economic loss? It could! There is a real risk that this provision will ultimately result in limiting recoveries to less than would otherwise be available if the United States were simply to renounce the convention, either because of the elimination of punitive damages, or because of a burgeoning federal law of damages which might be limited to economic losses only, or some other variation of the two. Perhaps the plan should refer to the law of the U.S. domicile of the citizen injured as the governing substantive law of damages? Or perhaps the plan should spell out the elements of damage recoverable irrespective of local law? There are serious issues raised by this provision, and the "selling point" of unlimited liability for economic and non-economic damages used by proponents of the proposal is imaginary.

Note also that the cost of this first-party insurance will apparently be the same for all passengers, whether they are children, single adults, bread winners, parents, etc., and that, unlike most first-party insurance where one pays a specific amount for a particular amount of coverage, this insurance has no such guarantee. Some claimants might pay the same amount for what ultimately becomes a small recovery, and others will make a large recovery? Is this an appropriate way to spread the risk?

Section 4.4. Notice and Information to Contractor.

Sub-section (a) provides that the carrier shall notify the contractor of any claim for personal injury or death "filed." Does this imply that there is no duty of notification until a lawsuit is filed? Why shouldn't the duty of notification arise upon the making of a claim? There is a risk that the word "filed" is or will be read as a term of art, implying a lawsuit.

Section 4.5. Claim Evaluation and Assistance.

Under this provision, the contractor must reimburse the carrier, its insurers or agents for the cost of the carrier's assistance to the contractor. Ultimately, the cost of this will be included in premium calculations applicable to the passengers. Currently, the carriers are contractually obliged to cooperate with their insurers, and the carriers have to bear the cost of that cooperation. Why should the cost of this shift to the passengers?

Section 5.1. Notice to Claimants.

The potential form of these notices is troubling. Recalling the famous (at least in aviation circles) "Alpert letter" sent to the victims of the Pan Am crash in Kenner, Louisiana, reveals that this section could be subject to abuse. Such notices may include such advice as "you don't need a lawyer to make this claim," "we will treat you fairly," etc. This needs to be looked at carefully.

Section 5.3. Settlement Inducement.

Like section 2.2, this allows the contractor to determine what it wants and requires the claimant to jump through as many hoops as it would like in order to trigger any obligation on the carrier's part. There simply is no reason to believe that insurance companies will act fairly or reasonably in the processing of claims, especially in the absence of a prejudgment interest or bad faith provision. Indeed, this language is slanted in favor of the insurance company. First, it requires that the claimant file a Proof of Claim in the form and detail specified by the contractor, and then goes on to provide that the contractor can ask for additional information. What additional information can there be if the claimant has already provided the claim "in the form and detail specified by the contractor?"

The attorney's fee provision is meaningless and deceptive. Even if the claimant complies with all the contractor's requests, there is no responsibility for attorneys' fees if the contractor makes an offer of two-thirds of the economic damages ultimately awarded. What about those claims where non-economic awards are allowed? A claimant in Florida might have a million dollar intangible loss, but only a $50,000 economic loss, and the carrier avoids responsibility for attorney's fees by making a $34,000 offer! If an attorney's fee provision is designed to prompt reasonable and timely settlement offers, it at least ought to have some teeth. These provisions allow the carrier to abuse the claimants with constant requests for information and then, after they have been abused, provide them with low-ball offers that take the contractor off the hook for attorneys' fees. Finally, if the claimant has not already done so, and after months of delay, the claimant will hire a lawyer. And in conjunction with Section 2.4(b), there is no liability for bad faith, or prejudgment interest. In other words, there is no real incentive for the contractor to settle early on a reasonable basis.

Section 5.4. Medical Benefits.

What about funeral bills?

Section 5.5. Consolidation of Claims.

This is a very dangerous provision. First the Proofs of Claim will almost always exceed $500,000,000. Just like Federal Tort Claims are submitted at high numbers, these Proofs of Claim will no doubt be submitted at high numbers. There simply is no downside to a high submission, and every downside to a low one. Indeed, the provisions of Section 5.3(b)(2) appears to require a high number. The Proof of Claim, of course, does not address the contractor's true exposure for damages; it merely preserves a claimant's options. Once the contractor adds all the Proofs up, each claimant automatically submits to the jurisdiction of the District Court in the District of Columbia. Who is going to pay for all of the claimants' lawyers to not only prosecute their damage claims, but to defend their rights in the allocation proceeding in the District Court? Finally, if the $500,000,000 is insufficient, why shouldn't the claimant be entitled to pursue third parties who might be liable to that claimant, instead of the claimant being required to assign those rights to the contractor? The liability limits should be established at a level that there is no possibility of the need for an allocation procedure.

Section 5.6. Recovery from Third Parties.

Under this proposal, the claimant has assigned all rights to the contractor to pursue third parties. What does it mean to say that the contractor shall use its "best efforts" to recover those damages? Does this inure to the benefit of the claimants? How does this relate to the limitation of liability lawsuit in the District of Columbia that will inevitably be filed under Section 5.5? Doesn't this provision foster litigation? What if the contractor is able to resolve all of the claims for under $500,000,000.00, and decides, for whatever reason, not to pursue third-party actions. Is it required to do so? Does this affect premiums?

Section 5.8. Consent to Jurisdiction.

Does this mean that as to claims filed against the contractor, there will be no multi-district litigation under 28 USC §1407? If it is intended to mean that, the provision should say so. This language does not. As previously noted, foreign nationals will still have the right to bring suit under the Warsaw Convention/Montreal Agreement. The Lockerbie crash makes that clear, because a number of claims by British citizens are pending in Florida's state and federal courts.

Does this provision affect removal rights? Will the contractor be permitted to remove claims filed against it in state court to federal court? The consent provided here ought to be a little more clear so that the plaintiffs' choice of forum will be meaningful. Query whether the contractor ought to have the right to remove cases from state court to federal court merely to have a damage trial. The federal courts are busy enough. Query also whether, by contract, the parties can waive the judicial forum non-convenients doctrine.

Section 6.1. Proof of Claim and Settlement.

Here we have yet another description of the burden on the claimant. At least, for the first time, this section mentions "reasonable" information requests. As previously noted, what happens if the claimant doesn't comply? Is the claim barred? Does the claim revert to one against the carrier? Can the claimant file suit before six months? The proposal doesn't say. The claimant probably ought not to be precluded from filing suit while the contractor is processing his claim.[5]

Anyone who does tort work knows that the potential for abuse under sub-paragraph (c) is high. According to this provision, the contractor can have multiple examinations whenever the contractor wants them.

Section 6.2. Action Against Contractor.

This relates to questions noted previously. It clearly implies (without directly saying) that no action can be brought unless there is "no settlement." We cannot know whether there will be a settlement until the contractor makes an offer. And the contractor won't make an offer until the claimant provides all the information the contractor requires. It needs to be clear that the claimant can file suit at any time.

Section 6.3. Claim Disposition.

This again raises the issue of what happens if there has been an apportionment proceeding in the District of Columbia. If there has been, and the claimant receives less than his full damages because of that, why should the claimant assign his rights of recovery to the contractor when the claimant has not been fully compensated?

Sub-paragraph (e), as also noted previously, should operate as a release of all those liable to the claimant *in tort*. There should not be any question about whether this applies to first party benefits that the claimant otherwise has available.

Section 6.5. Consent to Jurisdiction.

Please refer back to comments on the proceedings in the District of Columbia, particularly as to who pays for the claimant's lawyer.

Section 7.2. Criteria for Contractor.

What happens if, despite all attempts to be careful, the contractor becomes insolvent? Do the claims revert against the carrier? Are the claimants' claims delayed until the contractor's insolvency is concluded? Who is responsible? There are a host of problems that can occur here, and simply saying that a "solvent" insurer will be selected as contractor doesn't answer the question. No one would have believed ten years ago that some of the insurance companies in financial trouble today *would* be in trouble today.

Section 8.3. Governing Law and Interpretation.

Delaware is a very "corporation friendly" state. What implications does this have?

MISCELLANEOUS

1. Can this type of proposal effectively confer subject-matter jurisdiction on courts that may not otherwise have it?[6]

2. To what extent will regulation of the cost of this insurance be effective?

MAY 20, 1991.

Re Comments on Supplemental Compensation Plan.

Senator GEORGE MITCHELL, Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: By memorandum dated May 14, 1991, Michael Olin and Aaron Podhurst, members of a prominent firm of aviation trial lawyers, have offered extensive comments on the draft Supplemental Compensation Plan that will accompany Montreal Protocol No. 3. The text of the Resolution of Ratification now before the United States Senate requires the operation of a satisfactory Plan as a condition of ratification of, and continued adherence to, the Warsaw Convention as amended by the Protocol.

The draft Plan was submitted to the Senate by Secretary Skinner on February 1, 1991. The Plan was drafted by the airline associations in consultation with the Departments of Justice, Transportation and State, airline insurers, plaintiff's lawyers and the families of the victims of past airline tragedies. As Secretary Skinner specifically noted, however, the Plan is subject to the approval of the Department of Transportation in a public proceeding, where necessary and appropriate changes will be made to enhance the consumer protections provided under the Plan.

It is in this context that we welcome comments, such as the Olin & Podhurst memorandum, that suggest improvements to the Supplemental Compensation Plan. These comments are addressed in the enclosed analysis. Nevertheless, one comment deserves special attention because it is suggested that the current choice of law rule in the Plan makes its expanded protections for U.S. citizens a "mirage", since it could lead to the application of foreign law to limit an American's wrongful death recovery.

The draft plan originally submitted to the Senate by then Secretary Burnley on June 24, 1988, contained specific choice of law rules that invoked the law where the ticket was purchased, or if not purchased in the United States, the state of the passenger's permanent residence, or if neither a fallback state. Thus, the application of foreign law was expressly prohibited by that draft. In the process of rewriting the Burnley plan to expand the Plan's coverage, we received comments from trial lawyers to the effect that the Plan should not specify choice of law rules different than those applicable to the carrier. This would allow attorneys to continue to rely upon jurisdictions with favorable choice of law rules in wrongful death cases. Since any action under the Plan would be for damages only, in most cases the law of the decedent's domicile would govern in a wrongful death action. That was the rule in New York under the doctrine of *Kilberg* v. *Northeast Airlines, Inc.* decided in 1961. However, in January, 1991, the Court of Appeals for the Second Circuit set aside the *Kilberg* doctrine, applying Chinese law to limit the recovery of two Americans killed in an airline crash in China. *Barkanic* v. *CAAC*, 923 F.2d 957 (2d Cir. 1991). We have received several comments suggesting that this decision requires reconsideration of the Plan's choice of law rules to preclude the application of foreign law. We have already notified attorneys of the Department of Transportation that such a change would be appropriate. It was never the intent of the drafters of the Plan or anyone else we have consulted—including the Departments of Transportation and Justice—that foreign law should be applied to claims made under the Plan.

Our prinicipal difference with the Olin & Podhurst memorandum, of course, is its characterization of the effects of ratification of Montreal Protocol No. 3, and its suggestion that a continuation of the status quo is appropriate. The available evidence shows that most victims are *not* ultimately able to obtain reasonable recoveries on a timely basis under the current Warsaw Convention. The recent GAO study of Montreal Protocol No. 3 properly cites RAND Corporation data showing that the average compensation for economic losses in accidents governed by the current treaty are substantially less than that received in cases involving Americans killed in domestic aviation. Further, Warsaw cases can take over ten years to litigate, thereby depriving claimants of timely compensation. The KAL 007 cases have been in litigation for almost eight years and those families have not received any compensation. Many of those families have learned from experience that compensation delayed in this manner is compensation effectively denied.

The purpose of Montreal Protocol No. 3 is not to protect airlines from responsibility for their conduct, no more than the workmen's compensation laws are designed to protect employers from their own practices. This treaty was negotiated by the U.S. Government to ensure that U.S. citizens who are passengers in international air transportation are compensated for personal injury and death, no matter what the cause may be, in an otherwise uncertain international legal environment. The limitation the carrier's absolute liability to its passengers established by Montreal Protocol No. 3 was at the highest level the United States Government could negotiate with the world aviation community. It was one of the many reasons why the United States insisted upon the right set forth in Article 35A to establish a supplemental compensation system such as the one now accompanying Montreal Protocol No. 3. Moreover, airlines will continue to be held accountable for their safety practices by the travelling public, by government oversight and regulation, by the press, and in many cases by litigation for personal injury and property damage brought by persons other than the airline's own passengers.

Our preliminary analysis of some of the specific comments raised in the Olin & Podhurst memorandum is enclosed. Many of the comments involve what the authors believe are ambiguities in its drafting. It is almost impossible to draft a document of this kind that is entirely devoid of any perceived ambiguities. Therefore, section 8.3 of the draft Plan provides that "Any ambiguities arising under the Agreement shall be construed in favor of providing adequate and timely compensation for death or personal injury of passengers covered by this Agreement."

Thank you for providing us the opportunity to address these important issues. We assure you that all suggestions will be considered carefully before the draft Plan is submitted to the Department of Transportation, for formal public comment and approval. In that context, the Secretary of Transportation will ultimately determine the final improvements to the Supplemental Compensation Plan.

Sincerely,

Warren L. Dean, Dyer, Ellis, Joseph & Mills, Counsel to the International Air Transportation Association; James E. Landry, Senior Vice President and

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[5] Another question. If the carrier contests its responsibility for the first $130,000.00, will there be one lawsuit or two? Will the claimant have to sue the carrier first and get an excess judgment? Will that excess judgment bind the contractor? Does the claimant sue both the carrier and the contractor in the same lawsuit? If so, does the carrier consent to jurisdiction in the same forum that the contractor does?

[6] For example, in an allocation proceeding brought by the contractor in the District Courts for the District of Columbia, what if there is no diversity between the contractor and the plaintiff? The claim arises under this contract, and it is far from clear to me that that gives rise to federal question jurisdiction. So how does that claim get into court?

General Counsel Air Transport Association of American.

SECTION 1. DEFINITIONS

SECTION 1.5

It is suggested that the definition of carrier should be read generally, so as not exclude passengers flying on the free or promotional air transportation. Free or reduced rate transportation is specifically covered by the Plan.

SECTION 1.11

It is suggested that the expanded protection for the U.S citizens and permanent resident travelling between foreign points is illusory, because of the potential application of foreign law. Foreign law will not be applied to determine recoverable damages under the Plan.

SECTION 1.12

It is suggested that British citizens visiting New York would be governed by the existing Warsaw Convention, not by Protocol No. 3 and the Supplemental Compensation Plan. The United Kingdom has already ratified Montreal Protocol No. 3. The British citizen (assuming his or her ticket was not purchased in the U.S.) would be governed by Montreal Protocol No. 3 and whatever supplemental system is established by the British Government. If the ticket is purchased here, the U.S. Supplemental Compensation plan would apply.

SECTION 2.1. LIABILITY OF CONTRACTOR

It is suggested that the liability of the Contractor for any "event" differs from the liability of the airline for an "accident" under the Convention. Montreal Protocol No. 3 replaces "accident" with "event" to establish clearly that the treaty covers acts of terrorism.

It is further suggested that an automatic stay in an airline bankruptcy might affect the responsibilities of the Contractor under the Plan. The Plan specifically provides to the contrary, and the Plan should be unaffected by the procedures of filing under the Bankruptcy Act. If additional clarification of this point is deemed necessary, it will be added.

SECTION 2.2. CONDITIONS

It is suggested that the provisions requiring a passenger to cooperate with the Contractor are conditions of the Contractor's liability under the Plan, and that abuses will inevitably result from this. Cooperation with the Contractor, however, is a condition of the expedited dispute resolution procedures only, not of the Contractor's liability.

It is further suggested that the Plan provides that the Contractor is not liable unless the carrier would be responsible for an "accident" under the terms of the "existing Warsaw Convention/Montreal Agreement." The Plan supplements the Convention as amended by Montreal Protocol No. 3, which provide liability for any "event" causing death or personal injury. The "existing Warsaw Convention/Montreal Agreement" will no longer apply.

It is suggested that subsection (c) is overly broad in that it could be interpreted to require the assignment of the claimant's own first party insurance such as life or health insurance. It is extremely doubtful that this provision would be so construed, and it is certainly not intended to require such an assignment. Nevertheless, if clarification of the intent of this provision is necessary, language to that effect can be added.

SECTION 2.3. LIMITATIONS

It is suggested that the overall limitation of the Plan's coverage raises troubling questions, including the contestability of other claims. First, the Plan specifies that $500 million is the minimum, not maximum, coverage the Plan must provide for. The contestability of other claims, which is not authorized under the Plan, would not appear to be necessary, even in the extraordinarily rare possiblity this feature may ever be invoked. In this regard no airline accident to date has exceeded these levels. DOT has the power to raise the minimum level of coverage required under the Plan at any time experience suggests such an increase is necessary or desirable.

It is uncertain whether the Plan should specify the applicable period of limitation, even if it is in foreign air transportation, but this issue can be examined further.

SECTION 2.4. EXCLUSIONS

The Plan does not, as suggested, abolish claims for punitive damages beyond the Convention where they otherwise might lie. It simply does not cover punitive damages.

It is suggested that the contractor is free to act in bad faith in handling claims, with the assertion that its liability to pay attorney's fees is illusory. Without more, its impossible to assess these contentions. However, the operation of the Plan is subject to continuing oversight by the Department of Transportation and it is extremely difficult to envision continued bad faith claims administration. The Contractor is, after all, absolutely liable to the claimant for provable damages in court. Furthermore, the prospect of having to pay for attorney's fees in dispute settlement is considered a significant settlement incentive by insurers familiar with the Plan.

SECTION 2.5. CHOICE OF LAW

The comment that the draft Plan's choice of law rules undermine the benefits of the Plan is addressed in the letter transmitting this analysis. It is merely sufficient here to note that trial lawyers themselves differ on these issues, and that changing developments in state tort law, such as the Barkanic case, can have a devastating effect on the ability of American citizens to recover damages arising from events abroad. The flexibility inherent in the Plan to respond to these developments to the benefit of U.S. travellers is one of its most beneficial features.

SECTION 4.4. NOTICE AND INFORMATION TO CONTRACTOR

It is suggested that the term "filed" will be read as a term of art, limiting notice to lawsuits actually filed. That is not the intent of this provision and its language can be clarified.

SECTION 4.5. CLAIM EVALUATION AND ASSISTANCE

This provision was added to ensure that the agents and insurers of foreign airlines in particular will not have any disincentive to offer their full and complete cooperation to the Contractor.

SECTION 5.1. NOTICE TO CLAIMANTS

As has been previously mentioned the Plan is subject to continuing oversight by the Department of Transportation and any potential abuses by the Contractor can be addressed in that context. This would include objectionable terms in a notice to the claimant.

SECTION 5.3. SETTLEMENT INDUCEMENT

This comment once again assumes that a Contractor will act in bad faith in handling claims arising from a covered event. The likelihood of this occurring and the remedy for it have been previously addressed. See previous discussion with respect to section 2.4.

SECTION 5.4. MEDICAL BENEFITS

Funeral bills are of course covered by the Plan as are all other economic damages. This is the first time anyone has suggested interim payments are required for this expense.

SECTION 5.5. CONSOLIDATION OF CLAIMS

It is suggested here that the extremely unlikely event that the overall coverage of the Plan may be approached imposes a burden on the claimants. The same burden is borne by claimants under the tort system where the defendant files in bankruptcy and claims are limited to the insurance proceeds. It is the intent of the airlines to procure sufficient coverage so that this provision need not be invoked, but it is hoped that the procedures provided in the Plan would minimize the hardship in the extremely unlikely event that the Plan's coverage is exhausted in any accident. See previous discussion with respect to section 2.3.

SECTION 5.6. RECOVERIES FROM THIRD PARTIES

The Plan specifically provides that recoveries from third parties inure to the benefit of claimants in any consolidation action brought under the Plan.

SECTION 5.8. CONSENT TO JURISDICTION

This section merely ensures that a claimant may obtain jurisdiction over the Plan. How that jurisdiction will be exercised is in part the option of the claimant, and other trial lawyers have indicated that they clearly prefer flexibility in these matters.

SECTION 6.1. PROOF OF CLAIM IN SETTLEMENT

The potential for abuse in cooperation with the Contractor has been asserted repeatedly. The Plan only requires such cooperation where expedited dispute settlement procedures are involved. The claimant is not precluded from filing suit at any time.

SECTION 6.2. ACTION AGAINST CONTRACTOR

It is suggested here that the plan implies than no action can be brought against the Contractor unless there is "no settlement." Obviously, if there is a settlement, no action can be brought against the Contractor. The Plan does not state or imply anything else.

SECTION 6.3. CLAIM DISPOSITION

It is suggested here that the assignment of the claimants' rights should be reduced by the extent of any uncompensated claims that are apportioned against the total coverage of the Plan. That is exactly what the Plan provides for, in explicit language set forth in this section. The comments shed no light on why that language, which was drafted in consultation with other trial lawyers, is not adequate.

SECTION 6.5. CONSENT TO JURISDICTION

See previous discussion with respect to section 5.5.

SECTION 7.2. CRITERIA FOR CONTRACTOR

The selection of the Contractor will be subject to approval by the Department of Transportation in a public proceeding. Its solvency will be the principal consideration for selection.

SECTION 8.3. GOVERNING LAW AND INTERPRETATION

We would be pleased to consider any other suggestion for governing law.

Miscellaneous

1. This Plan does not confer subject matter jurisdiction, which Federal courts will have in any event. See attached letter to Senator Biden from Professors Lowenfeld and Mendelsohn.

2. The coverage for the supplemental compensation plan will be competitively procured. Its costs will be commensurate with the capacity of the marketplace, as are the insurance costs of all transportation companies that are ultimately borne by the users of those services.

NEW YORK UNIVERSITY,
SCHOOL OF LAW,
New York, NY, March 7, 1991.

Hon. JOSEPH R. BIDEN, Jr.,
U.S. Senate,
Washington, DC.

DEAR SENATOR BIDEN: You have asked for our views concerning the need for legislation to implement the so-called Supplemental Compensation Plan pursuant to Article 35A of the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air, as it would be amended by Additional Protocol No. 3 to the said Convention, done at Montreal, September 25, 1975 and presently pending before the Senate. Our expertise in this area stems from our earlier participation in the problems of compensation for passengers injured or killed in international air transportation when we were officials of the U.S. Department of State in the 1960's, as well as subsequent writing, teaching, and testimony on the subject.[1]

The Supplemental Compensation Plan

The Supplemental Compensation Plan, as you know, is designed to enable the United States to remain part of the world-wide Warsaw Convention system as it would be amended, while providing the United States citizens (and other eligible passengers) or their survivors with compensation adequate by current American standards. In the version presently before the Senate, the Supplemental Compensation Plan would provide a fund that would be liable, without limit and regardless of anyone's fault, for both economic and non-economic damages arising from an accident in international air transportation (as defined). This liability would be in excess of the amounts for which the air carrier could be held liable under the Convention/Protocol—about $130,000 per person. The fund would be managed by a contractor under the supervision of the Secretary of Transportation, and would be financed by a contribution collected from passengers at the time they purchased their tickets.

Jurisdiction of Courts under the Plan

In the version presently before the Senate, the Supplemental Compensation Plan does not expressly confer jurisdiction on any particular court, but provides, in §§5.8 and 6.2, for consent by the contractor to jurisdiction of any court within the United States having subject matter jurisdiction, which seems to include both state and federal courts. It also provides, in §5.5, for consolidation of claims in the U.S. District Court for the District of Columbia in the event the limit of coverage per incident might be exceeded, and provides in §6.5 that claimants agree to the jurisdiction of that court in the situation contemplated. All of these provisions, and the Plan itself, would be in implementation of Article 35A of the Convention as it would be amended.

Normally, a claimant in behalf of a passenger would present his/her claim first against the carrier, and the contractor would be liable only for the excess over the Convention limit. The Plan also provides, in §1.11, for compensation for passengers injured in international air transportation not covered by the Convention. Thus where a foreign carrier is not amenable to suit in the United States, or where the carrier settles with a claimant prior to suit, a claimant may wish to sue the contractor directly, without joining the carrier.

The Question Presented

You have asked whether legislation is required to carry out these provisions of the Plan. While legislation might well be desirable from the point of view of Congress, in that the Plan, together with the Protocol, would make significant changes in the legal regime governing compensation for persons injured or killed in international air transportation, our conclusion is that if the Protocol is ratified upon advice and consent of the Senate, as provided in Article II, §2, cl.2 of the Constitution, in express contemplation of the Supplemental Compensation submitted to the Senate, there would be no Constitutional impediment to putting the Plan into effect without implementing legislation. Of course, if the Plan were expressly authorized by legislation, its essential features would be "locked in," and less susceptible to being altered by administrative action.

Further, it is difficult to see which of the persons who may be affected by the Plan would have standing and incentive to challenge the Plan. Claimants who would be entitled to compensation without limit would have no incentive to challenge either the jurisdictional or substantive provisions of the Plan: air carriers—domestic as well as foreign—would continue to enjoy protection of the Convention and Protocol; and third parties such as air traffic control and manufacturers would be no worse off—and usually better off—by virtue of the operation of the Plan. The only situation is which a claimant (and his/her attorney) might be worse off by operation of the Plan would be the rare circumstance in which—if there were no Convention and no Supplemental Compensation Plan—a claimant might be able to establish grounds for punitive damages. But such a claimant would not have standing to challenge the Plan itself and a challenge to the Convention would certainly fail. We look at each of the principal issues in detail below.

1. Jurisdiction of the Federal Courts

It is now clear that a claim against an air carrier covered by the Convention is a federal question arising under a treaty.[2] Under a 1989 decision of the U.S. Supreme Court, *Finley* v. *United States*, 109 S. Ct. 52 (1989) (rejecting suit against a private defendant sought to be joined to a suit in federal court under the Federal Tort Claims Act against the Federal Aviation Administration), there was some danger that if a claimant in a federal action against an airline arising under the Convention sought to join the contractor in the same action in federal court, the claim against the contractor might be dismissed if complete diversity did not exist between the claimant or claimants and the contractor. However, section 310 of the Judicial Improvements Act, Pub. L. 101-650 (Dec. 1, 1990), enacting a new provision of the Judiciary Code, 28 U.S.C. §1367, appears to have cured that problem.

New section 1367, permits federal courts to exercise "supplemental jurisdiction over all other claims that are so related to claims in the [original federal question action] that they form part of the same case or controversy * * *", and makes clear that this supplemental jurisdiction includes "claims that involve the joinder * * * of additional parties," such as the contractor under the Supplemental Plan. While subsection (c) of section 1367 provides that in some circumstances the district court may decline to exercise supplemental jurisdiction, it seems clear that to do so in the context of an airline disaster subject to the amended Warsaw Convention and the Supplemental Compensation Plan would be an abuse of discretion. We are confident that whatever concern there may have been about jurisdiction in federal courts over claims under the Plan under 28 U.S.C. §1331 has now been removed by enactment of §1367, and we do not believe that any further concern on that score is justified. Only in the case where the claimant seeks to sue the contractor directly without suing the carrier (i.e., in non-Convention cases or where the carrier has settled with the claimant prior to suit) is there a chance that federal courts might not have jurisdiction, and then only if there were no diversity of citizenship between the claimant and the contractor. In those rare cases a claim against the contractor could, of course, be brought in state court.

2. The Supplemental Compensation Plan Compared to the 1966 Montreal Agreement.

You asked in your letter about differences between the Supplemental Compensation Plan and the Montreal Agreement of 1966 that might be relevant to the need for implementing legislation. It seems to us that the current Supplemental Compensation Plan stands on much firmer ground than the 1966 Agreement, in that it has been widely discussed, has been the subject of hearings and revisions, and would be regarded as coming within the ratification process, whereas the 1966 Agreement was literally put together overnight without any participation by the public.[3] We believe it is highly instructive that no legal challenge has been raised to the Montreal Agreement of 1966, and that in several cases under the Warsaw Convention in the interval, the U.S. Supreme Court has taken for granted that the Agreement is part of U.S. law.[4] It is of course true that the 1966 Montreal Agreement does not require any extra payment on the part of passengers, but we do not believe this difference is decisive.

3. Non-Warsaw Travelers

You asked whether the aspect of the plan that grants benefits to U.S. citizen air travelers not governed by the Convention requires implementing legislation. Apart from the issue concerning the jurisdiction of the federal courts as discussed above, we do not see any need for implementing legislation with respect to travel by U.S. citizens between foreign points. The contractor has bound itself to be liable for damages according to the Plan, and the claimants would not be deprived of any right they would otherwise have.

If it turns out that a flight on which an accident occurs is not governed by the Convention (for instance if the ticket covers travel between the United States and country *X*, *X* is a country that has not ratified the Montreal Protocol, and the United States has denounced the unamended Warsaw Convention), it is conceivable that a claim might be

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[1] See, e.g., Lowenfeld and Mendelsohn, "The United States and the Warsaw Convention," 80 Harv. L. Rev. 497 (1967): A. Lowenfeld, *Aviation Law*, Ch. VII (New York: Matthew Bender 1981).

[2] See *Benjamin v. British European Airways*, 572 F.2d 913 (2d Cir. 1978).

[3] See Lowenfeld and Mendelsohn, note 1 supra, at pp. 593-96.

[4] See, e.g., *Air France v. Saks*, 740 U.S. 392, 395-96 (1985); *Chan v. Korean Air Lines, Ltd.*, 490 U.S. 122, 123-26 (1989).

brought directly against the carrier involved, without reference to the Plan; such a claim would make sense for the claimant only if he/she were willing to await a jury trial covering not only fault of the carrier proximately causing the accident, but such gross misconduct as would justify imposition of punitive damages. If a claimant were prepared to take this course—and it would be a brave lawyer indeed who would advise his client to give up the assured recovery of compensation under the Supplemental Compensation Plan—the Plan as a whole would not in any way be impaired.

4. The Ticket Surcharge

Finally, you ask about the authority to collect the "contribution" from passengers to finance the Supplemental Compensation Plan. We agree with the Department of Justice that the contribution or surcharge is not a tax, because it does not go into the Public Treasury. The authority to require collection of the surcharge would flow directly from Article 35A of the amended Convention, which authorizes parties to the convention to adopt a supplemental compensation plan and sets express conditions on collection of a surcharge—no cost (other than administrative) to the carriers; no discrimination between carriers—i.e., the plan must apply to all carriers, domestic and foreign; and whoever has contributed to the plan must be entitled to the benefits. The treaty itself thus would support any amendment by the Secretary to the regulations of the Department of Transportation (present 14 C.F.R. Part 203) needed to implement the plan, including the requirement of contributions to support the Supplemental Compensation Plan.

Conclusion

In sum, repeating our letter of June 19, 1990, the most critical need in connection with the Warsaw Convention is to take some action, either ratification of the Montreal Protocols and implementation of the Supplemental Compensation Plan, or denunciation of the Convention. There is no excuse for maintaining the 1966 Interim Agreement in effect for a 26th year. It would be a simple matter to draft implementing legislation for the Supplemental Compensation Plan, and we would be glad to assist in such effort. In our judgment, however, there is no need to adopt legislation in order to bring the Plan into effect, assuming the United States, and then the required number of other states, ratify the Montreal Protocols to the Convention.

Respectfully Submitted,

ANDREAS F. LOWENFELD.
ALLAN I. MENDELSOHN.

DEPARTMENT OF TRANSPORTATION,
Washington, DC., June 5, 1991.

MEMORANDUM

Subject: Montreal Protocols—Olin and Podhurst Comments on Draft Supplemental Compensation Plan.

From: Donald H. Horn, Assistant General Counsel for International Law.

To: Robert Carolla, Legislative Assistant to Senator George J. Mitchell.

We have examined the May 14, 1991 memorandum from Michael Olin and Aaron Podhurst, providing some detailed comments on the draft Supplemental Compensation Plan. For ease of discussion, the comments fall generally into three categories: (1) those which raise significant substantive problems which appear, absent a strong justification to the contrary, to require a revision in the draft Supplemental Compensation Plan; (2) those regarding Plan provisions which appear to be drafted in a manner which may give rise to unnecessary burdens on claimants, and may provide undue protection or advantages for the Contractor or the carriers; and (3) those regarding Plan provisions which have led to confusion or ambiguity in interpretation, as to which clarification by minor drafting changes may be appropriate.

At the outset, I would like to reiterate the statement of Secretary Skinner in his letter of February 1, 1991, submitting the latest version of the Supplemental Compensation Plan to the Senate Foreign Relations Committee. He said that the Plan remains subject to revisions that may appear in the public proceeding before the Department for approval of the Plan to be necessary or appropriate to enhance the consumer protections provided under the Plan. In this respect we welcome the comments of Messrs. Olin and Podhurst, since they have highlighted certain instances where revisions may indeed be appropriate. We would anticipate that other comments of interested parties may reveal further unintentional inadequacies or ambiguities in the Plan which warrant revision. The public proceeding which will be held before the Department approves the Plan pursuant to section 412 of the Federal Aviation Act, is designed precisely to solicit the maximum public participation, so that we can be assured that the final version of the Plan delivers all of the intended benefits.

The Olin/Podhurst Memorandum Clearly raises one significant difficulty which warrants a revision to avoid unintended results. Section 2.5 provides for the applicability of the same choice of law as applicable to an action against the carrier. The Memorandum points out that, particularly where the Convention (the Warsaw Convention as amended by the Montreal Protocols) is not applicable, foreign law might be applied, and might include limits of liability either of the unamended Convention or of foreign national law. See, *Barkanic* v. *CAAC*, 923 F. 2d. 957 (2d Cir. 1991). It certainly was not the intent of the Plan to permit limitations of liability applicable under foreign law to be applied in a manner that might defeat the unlimited recoveries provided under the Plan. The carriers appear to agree that these provisions should be revisited to ensure that such a result would not occur.

The Memorandum also points out various provisions where the Plan may be drafted in a manner which is weighted unduly in favor of the Contractor or carriers, at the expense of claimants. The section 5.3 Settlement Inducement provision appears to be in this category. It excludes the payment of a claimant's attorneys' fees by the Contractor, if the Contractor makes a timely offer of settlement that includes compensation for damages for "economic" loss (as opposed to both economic and non-ecomonic losses) this is at least two-thirds of the amount of damages ultimately awarded. While most cases that would be subject to compensation under the Plan would be for wrongful death, as to which damages are likely to be primarily "economic", it does appear that this provision may be sufficiently restrictive in a sufficient number of cases to unduly limit the effectiveness of the settlement inducement feature. We believe that this matter warrants further consideration. Other provisions in this category include: section 2.4(b)—exoneration of the Contractor even when he acts in bad faith, and sections 5.3 and 6.1—which may require a timely meeting of possibly unnecessary and repetitous requests by the Contractor for information from the claimant. As currently set forth in the Plan, failure to timely provide such information could render the settlement inducement feature inapplicable. We will carefully consider the comments of all parties in our public proceeding, in order to determine whether these apparent restrictions on claimants' benefits under the Plan are justified by legitimate concerns on the part of the Contractor.

Many of the other comments appear to involve perceived ambiguities or confusion as to the use of definitions or words of art. Many of these perceived difficulties may be resolved by minor drafting changes. The Department will give careful consideration to any proposed drafting suggestions which may improve the text of the Agreement, or remove ambiguities.

Of primary significance is the fact that the terms of the Plan must be approved by the Department of Transportation after a full public proceeding in which all interested parties may comment and proposes revisions to the plan. We will solicit comments from consumers, trial lawyers, insurance companies, airlines, and any other members of the public who may have an interest. Set forth below is a synopsis of the procedures we envision which will insure that all interested persons will have an ample opportunity to participate in the Department's review process. In addition, the contract with the Contractor, and any amendments or revisions to the Plan or the contract, will be subject to Department review under similar procedures. Moreover, review or reconsideration of any feature of the Plan may be initiated by the Department at any time following a petition by any interested person, or on the Department's own initiative. This includes the level of the Compensation Plan contribution, or any change in the level of that contribution.

TERMS OF THE PLAN

The Plan provides that it shall be filed with the Secretary of Transportation for approval under sections 412 and 414 of the Federal Aviation Act (49 U.S.C. 1382, 1384), and that any amendment or addition shall be similarly filed for approval (§§4.9, 8.2). It further provides that:

"This Agreement and each addition or amendment thereto shall have no force and effect until and unless 1) such approval is Granted by the Secretary and then only according to the terms of the Agreement and any conditions of any order granting such approval, and 2) the Secretary requries carriers holding authority under the Federal Aviation Act to be deemed to have agreed to the provisions of this Agreement." (§8.2)

Similarly, the contract which will be negotiated with the Contractor must be approved by the Secretary prior to its effectiveness, or the effectiveness of any renegotiation or amendment to the contract. (§§7.5, 7.6)

In addition, the Department would, in accordance with sections 8.1(d) and 8.2(b) of the Plan, by a rulemaking and/or show cause proceeding, include as a condition in all U.S. Air carrier certificates, foreign air carrier permits, or other authority issued by the Department (e.g., a §416 exemption), a requirement that all carriers operating to, from or within the United States shall be deemed to have agreed to the terms of the Agreement. Such a rule is currently in effect with respect to the so-called Montreal Intercarrier Agreement providing for the $75,000 limit to and from the United States under the unamended Warsaw Convention. See, 14 C.F.R. Part 203.

ANTICIPATED SCENARIO OF DEPARTMENT APPROVAL OF THE PLAN AND CONTRACT

A recapitulation of a scenario of the Department's approval and monitoring of the operation of the Plan and the contract is as follows:

1. The Senate grants its advice and consent to ratification of Montreal Protocols 3 and 4.

2. ATA and IATA invite submission of proposals to act as Contractor under the Plan by widespread advertisement and direct solicitation of known interested companies.

3. The Plan and possibly a tentative contract is submitted to the Department for approval under Sections 412 and 414 of the Federal Aviation Act.

4. The Department invites all interested persons to submit comments by Notice published inter alia in the Federal Register.

5. The Department issues a show cause order and/or a Notice of Rulemaking proposing to amend all outstanding certificates, permits and other authority to require that all carriers shall be deemed to have agreed to the terms of the Agreement.

6. The Department issues a final order approving the Plan and/or contract with appropriate conditions to insure that the operation of the Plan will not be adverse to the public interest, and finalizes the certificate, permit and other authority conditions which constitute agreement to the terms of the Plan.

7. The United States deposits the U.S. ratification of Montreal Protocols 3 and 4, together with a Notice of Denunciation of the Warsaw Convention unamended by Montreal Protocols 3 and 4.

8. We anticipate rapid ratification by other countries of Montreal Protocols 3 and 4 following the U.S. ratification, and denunciation of the unamended Warsaw Convention, since only parties to Montreal Protocols 3 and 4 would remain under a Warsaw Treaty relationship with the United States upon the effectiveness of the U.S. denunciation of the unamended Warsaw Convention (6 months following its deposit).

9. The Warsaw Convention as amended by Montreal Protocols 3 and 4 will become effective on the 90th day following the deposit of the 30th ratification of the Protocols (19 countries had ratified as of June 4, 1991).

10. At least 45 days prior to the effective date of the Protocols, ATA and IATA will file for approval under sections 412 and 414 of the Federal Aviation Act any revisions to the contract with the Contractor (including any change in the level of the Plan Contribution). After appropriate notification and participation by interested persons, the Department will approve the revisions subject to necessary or appropriate conditions.

11. The Plan will become effective upon the effectiveness of the Montreal Protocols to the Warsaw Convention, but only after all Department approvals have been obtained, including approval of the level of the Plan Contribution.

12. Any revisions to the Plan Contribution, the contract with the Contractor under the Plan, or the Plan itself, will not become effective until filed with the Department, and approved by the Department, subject to appropriate conditions.

ORDER OF PROCEDURE FOR MONDAY, JULY 8, 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate resumes consideration of S. 1241, the crime bill, Senator RUDMAN be recognized to offer his amendment relative to police; that there be 1 hour for debate equally divided in the usual form prior to Senator BIDEN'S motion to table the Rudman amendment; that the Biden tabling vote be set to occur at 7 p.m. on Monday, July 8; that once Senator BIDEN has made the motion to table the Rudman amendment, that amendment be laid aside and Senator BINGAMAN be recognized to offer his amendment on literacy in State prisons; that only relevant second-degree amendments be in order to Senator BINGAMAN'S amendment; and that no amendments to any language that may be stricken be in order, and no motions to recommit be in order prior to the disposition of these amendments.

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

ORDERS FOR MONDAY, JULY 8, 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate adjourns today it stand in adjournment until 3:30 p.m. on Monday, July 8, and that when the Senate reconvenes on Monday, July 8, the Journal of Proceedings be deemed to have been approved to date; the call of the calendar be waived; and no motions or resolutions come over under the rule; that the morning hour be deemed to have expired; that following the time for the two leaders there be a period for morning business not to extend beyond 4 p.m., with Senators permitted to speak therein for up to 5 minutes each; and that the Senate resume consideration of the crime bill, S. 1241, at 4 p.m. on that day.

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

ADJOURNMENT UNTIL MONDAY, JULY 8, 1991, AT 3:30 P.M.

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand adjourned as provided for in House Concurrent Resolution 175, until 3:30 p.m., on Monday, July 8.

There being no objection, the Senate, at 6:38 p.m. adjourned until Monday, July 8, 1991, at 3:30 p.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 28, 1991:

DEPARTMENT OF STATE

JOHN E. BENNETT, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF EQUATORIAL GUINEA.

MARY ANN CASEY, OF COLORADO, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA.

WILLIAM HARRISON COURTNEY, OF WEST VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS U.S. COMMISSIONER FOR THE BILATERAL CONSULTATIVE COMMISSION AND THE JOINT CONSULTATIVE COMMISSION ESTABLISHED BY THE THRESHOLD TEST BAN TREATY (TTBT) AND THE PEACEFUL NUCLEAR EXPLOSIONS TREATY (PNET).

JOHN THOMAS MCCARTHY, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER—COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF TUNISIA.

NICHOLAS PLATT, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ISLAMIC REPUBLIC OF PAKISTAN.

GORDON S. BROWN, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER—COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ISLAMIC REPUBLIC OF MAURITANIA.

ROBERT H. PELLETREAU, JR., OF CONNECTICUT, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ARAB REPUBLIC OF EGYPT.

J. STAPLETON ROY, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE PEOPLE'S REPUBLIC OF CHINA.

JOHNNIE CARSON, OF ILLINOIS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF UGANDA.

LYNN MARVIN HANSEN, OF COLORADO, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS U.S. REPRESENTATIVE ON THE CONVENTIONAL ARMED FORCES IN EUROPE (CFE) JOINT CONSULTATIVE GROUP AND TO THE NEGOTIATIONS ON CONVENTIONAL ARMED FORCES IN EUROPE (CFE).

JANE E. BECKER, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE VIENNA OFFICE OF THE UNITED NATIONS AND DEPUTY REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE INTERNATIONAL ATOMIC ENERGY AGENCY, WITH THE RANK OF AMBASSADOR.

RICHARD W. CARLSON, OF CALIFORNIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SEYCHELLES.

PEACE CORPS NATIONAL ADVISORY COUNCIL

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR THE TERMS INDICATED:

JOHN J. MCCARTHY, OF CALIFORNIA, FOR A TERM EXPIRING OCTOBER 6, 1992.

CRAIG R. STAPLETON, OF CONNECTICUT, FOR A TERM EXPIRING OCTOBER 6, 1991.

MYRON A. WICK III, OF CALIFORNIA, TO BE A MEMBER OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR A TERM EXPIRING OCTOBER 6, 1992.

TOM G. KESSINGER, OF PENNSYLVANIA, TO BE A MEMBER OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR A TERM EXPIRING OCTOBER 6, 1991.

NIARA SUDARKASA, OF PENNSYLVANIA, TO BE A MEMBER OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR A TERM EXPIRING OCTOBER 6, 1991.

BOARD FOR INTERNATIONAL BROADCASTING

LANE KIRKLAND, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD FOR INTERNATIONAL BROADASTING FOR A TERM EXPIRING APRIL 28, 1993.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

IN THE FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING KEITH BOVETTI, AND ENDING DALE SLAGHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JUNE 24, 1991.

FOREIGN SERVICE NOMINATIONS BEGINNING DAVID P. DOD, AND ENDING VICTOR D. COMRAS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JUNE 24, 1991.