SENATE—*Thursday, July 18, 1991*

(Legislative day of Monday, July 8, 1991)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

PRAYER

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

Let us pray:

* * * *the patient in spirit is better than the proud in spirit.*—Ecclesiastes 7:8.

Father in Heaven, in our culture strong people do not admit weakness, but they feel it. They are not allowed to admit vulnerability, but they know they are. Power is the word and powerlessness is unacceptable. So we live as though we are supposed to be infallible and the pressure of perpetuating such illusion is debilitating and destructive.

Forgive us Lord for such transparent hypocrisy. Save us from its incipient enslavement, and free us to be ourselves. Help us to accept the exciting prospect that to acknowledge weakness and inadequacy might open the door to divine possibilities beyond our best human reasoning. We pray in the name of the truly authentic human who was himself and never pretended to be anything else. 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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 18, 1991.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a time for the transaction of morning business not to extend beyond the hour of 10 a.m.

Mr. STEVENS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

THE NATIONAL VOTER REGISTRATION ACT

Mr. STEVENS. Mr. President, I want to address the Senate on the subject of the National Voter Registration Act. I do not have time reserved to speak on that but I do want to mention it in this time of morning business.

Mr. President, I want to call the attention of the Members of the Senate to a report that has just come out of West Virginia—on June 17. I will read this rather than put it into the RECORD. It is an AP report. The headline is "Officials criticize postcard registration." "Voter fraud case points to misuse."

HUNTINGTON.—A 76-count indictment charging 10 people with vote fraud should open the eyes of lawmakers about potential abuses of postcard voter registration, officials said.

"One of the conclusions of this grand jury was that the mail-in registration system should be abolished as soon as the Legislature can take action," said special prosecutor Tom Plymale.

The special Cabell County grand jury on Friday charged 10 people with vote fraud over the past five years. All the counts were related to postcard applications except for six misdemeanor charges against Mayor Bobby Nelson.

The grand jury had been called to investigate allegations that political bosses were using falsified postcard registrations to show their ability to drum up political support in certain areas of town.

Because the cards can be filled out anywhere and often are notarized after being signed, they allow people using false names and addresses to register to vote, critics of the system say.

Plymale, an assistant Wayne County prosecutor, said the panel felt there was an incredible "potential for misuse" under the system and that the procedure should be examined carefully.

Cabell County Commissioner Phyllis Given, a member of the House of Delegates when the registration plan was passed nearly seven years ago, said the grand jury pointed out some major flaws in the system.

"I feel after what happened that the Legislature should repeal it," Given said.

Sen. Ned Jones, D-Cabell, agreed the system needs to be studied.

"If we have a system where there's a lot of abuse, I think we need to look into that system," Jones said. "But, I don't know if that means repealing it or working on tightening it up somehow."

Secretary of State Ken Hechler has said that even with the abuses found in Cabell County, the postcard system has its merits and should not be discontinued.

Let me point out that this bill, S. 250, would prevent the legislature of a State from abolishing or changing postcard and mail registration. This will take away from the States the right to control their own election processes. This is just the tip of an iceberg we are seeing now in West Virginia about these methods to make registering to vote easier.

I think we all would like to have a good-faith effort to increase the voter turnout.

But to have a situation where we make it so easy that fraud is rampant, and we prevent the legislatures of the individual States from taking any action to change their voter registration procedures, I think is absolutely wrong. For that reason, I again urge that this bill not be considered, that we put off the whole consideration of this until we get a report from the States—a further report on what they want. The registrars of the individual States oppose this bill, and so should the Senate.

I yield the floor.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Louisiana is recognized for up to 15 minutes.

NATIONAL ENERGY SECURITY ACT

Mr. JOHNSTON. It has been over a month since the Committee on Energy and Natural Resources reported the most comprehensive, balanced, effective energy bill ever reported by any committee of Congress.

In the last 2 days, I have dealt with that bill. On the first day, Tuesday, we dealt with the bill in general, and yesterday, we spoke about the energy efficiency provisions.

Mr. President, it has been nearly a year since Iraq invaded Kuwait. During that time, American cars and trucks have burned about 110 billion gallons of gasoline and about 22 billion gallons of fuel oil.

It is over a month since our committee reported S. 1220, the National Energy Security Act of 1991. During that time, American cars and trucks have burned about 9 billion gallons of gasoline and nearly 2 billion gallons of diesel fuel.

Our transportation sector's appetite for oil is voracious. Two-thirds of all the oil used in the United States is used in transportation. Plainly, any effort to curb our oil consumption or re-

• 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

duce our dependence on foreign oil imports must address the transportation sector in its profligate use of oil.

There are three ways we can go about it: First, we can discourage people from driving by substantially raising gasoline taxes. I note in the morning paper where President Bush says he would veto a bill, even if it contained as little as 5 cents in gasoline taxes.

I would not propose gasoline taxes. The Congress would not vote for them. The President would veto them. And the American people do not want them. So much for gasoline taxes.

Second, we can force the auto makers to make cars and trucks more fuel efficient through tougher corporate average fuel economy or CAFE standards. Tougher CAFE standards are an integral part of S. 1220. I will have more to say about CAFE standards in the days ahead.

Third, Congress can encourage the development of substitutes for gasoline. This third approach is what I want to focus on today.

S. 1220 contains four important subtitles designed to help replace gasoline and diesel fuel with alternatives like methanol, ethanol, natural gas, propane, hydrogen, and electricity. The first of these subtitles deals with alternative fuels used by motor vehicle fleets owned by Federal, State, or local governments or by private firms.

S. 1220 requires State and local governments and private firms that own at least 50 vehicles to use alternative fuel vehicles in fleets of 20 or more vehicles operated primarily in the Nation's 125 largest cities. That is easy to say, but the import of it is tremendous, Mr. President.

All fleets in government or private firms where you have 50 vehicles are going to have to have alternatively fueled vehicles, beginning later in the 1990's. All Federal agencies, regardless of the number of vehicles in their fleets, or their locations, would have to use alternative fuel vehicles.

S. 1220 does not require fleet operators to convert their existing conventional vehicles to use alternative fuels, but it does require that specified portions of all new vehicles acquired by those operators each year be alternative fuel vehicles.

For Federal and State fleets, these requirements begin in 1995. For local and private fleets, they begin in 1998. By 2000, 9 of every 10 new Federal fleet vehicles and 9 of every 10 new vehicles in qualifying State fleets will have to run on alternative fuels. By 2000, 7 out of every 10 new fleet vehicles acquired by covered municipal or private fleets must run on alternative fuels.

Mr. President, this is revolutionary. It is very tough stuff, but it is very effective in terms of getting an alternative fuel mix out there in both government, State-owned, and private fleets.

A second subtitle promotes the development of electric vehicles. Electric vehicles are a form of alternative fuel vehicles, but they are unique in promising zero tailpipe emissions of harmful air pollutants in the near term. S. 1220 authorizes the Secretary of Energy to enter into cooperative agreements for electric vehicle research and development, field demonstrations, and infrastructure development. It also amends the Alternative Motor Fuels Act to permit the Federal Government to acquire electric vehicles.

Mr. President, in areas like the L.A. County basin, we really need electric vehicles. The only way we are going to get them is for the Federal Government, I believe, to go into it in a massive way, as our bill does, which will create the incentive for manufacturers to manufacture electric vehicles. This bill does it.

A third major subtitle ensures the availability of adequate supplies of replacement and alternative fuels. This subtitle incorporates many of the principles long and diligently advanced by Senator JEFFORDS in his alternative fuel bill, S. 716. It directs the Secretary of Energy to seek voluntary supply commitments from domestic fuel providers to ensure that adequate domestic supplies will be available to meet the public needs. It also gives the Secretary standby authority to require domestic providers to make supplies available in the event of a shortage.

A fourth subtitle provides cooperative agreements and financial assistance to municipal transit authorities in large urban areas to demonstrate the feasibility of using alternative fuels for mass transit. It also establishes training and certification programs for technicians who convert conventional vehicles to run on alternative fuel.

Mr. President, the use of alternative fuels to run cars and trucks is not a new idea. Congress has been subsidizing the use of ethanol as a motor fuel through excise tax exemptions since the late 1970's. Indeed, billions of dollars have been spent on ethanol. In 1988, we passed the Alternative Motor Fuels Act, which called for the Federal Government to acquire the maximum practical number of alternative fuel vehicles and initiated various studies of alternative fuels and alternative fuel vehicles.

Congress gave alternative fuels a major push last year in the Clean Air Act amendments. We required fleets of 10 or more vehicles in 22 cities to start using alternative fuel vehicles by 1998. We also authorized the State of California to set up a pilot program designed to put at least 750,000 alternative fuel vehicles on the road before the end of the decade.

As an aside, I might say that while the Clean Air Act did a lot for alternative fuels, one of the problems is that one of the alternative fuels available is the new kind of gasoline to be made, reformulated gasoline, which does not get us off dependence on foreign fuels. This bill, S. 1220, does exactly that.

The administration supports the use of alternative fuel vehicles. In April, the President issued an Executive order requiring Federal agencies to acquire the maximum practical number of alternative fuel vehicles. The President's national energy strategy, S. 570, contains an aggressive alternative fuel program that would require State and private fleets of 10 or more vehicles in 125 urban areas to begin using alternative fuel vehicles in 1995.

Many States and private firms already use alternative fuel vehicles. Several States have laws mandating their use by some State agencies. Major corporations like the United Parcel Service, many natural gas utilities, and numerous transit and schoolbus fleets have begun using alternative fuel vehicles. In all, there are about 30,000 vehicles operating on natural gas in the United States and over 300,000 vehicles operating on propane. Over half of the States have one or more public or private fleets using some alternative fuel vehicles.

The auto companies are beginning to produce limited numbers of alternative fueled cars and light trucks. A few service stations have begun offering alternative fuels to the public.

Mr. President, even though what we have done is a good start, 30,000 vehicles out there operating on natural gas and 300,000 on propane, the only way we are really going to get alternative fuels in broad use in the United States is with the kind of program which we have here in S. 1220.

Only by mandating a broad use of alternative fuels are we going to get the automobile companies to begin to manufacture the vehicles, are we going to get the fleets to purchase those vehicles, and are we going to get the fuels broadly available to Americans and the distribution system both for vehicles and for the fuels available.

We must get alternative fuels vehicles and fuels cost competitive with the cost of conventional fuels, and fuels supplies must become reliable and as convenient as gasoline. That is why our bill goes into this alternative fuels vehicle in a massive way—it is, in fact, a big intrusion, if you will, into the free market—by mandating their purchase both by private fleets and by State and Federal and local governments.

But that is the only way you can get it done, because unless you mandate these purchases and mandate this manufacture and mandate that the fuel supply will be there, then there will always be a chicken and egg situation that will prevent the automobile companies from manufacturing because the

fuels are not available or because the demand is not there. And the demand is not there because the fuels are not available or because the price is not competitive. It must be brought along all simultaneously, and S. 1220 does precisely that.

All of this is helpful, Mr. President, but it still is not enough. The American consumer cannot go into a car showroom and buy an alternative fuel vehicle. While a few service stations might sell one alternative fuel or another in some areas, the public cannot refuel alternative fuel vehicles in most places.

The fact is the American consumer will not accept alternative fuel vehicles until their cost becomes competitive with the cost of conventional vehicles and fuel supplies become as reliable and as convenient as gasoline. The auto companies will not mass produce alternative fuel vehicles and the oil companies will not install alternative fuel service stations until there is enough consumer demand to make them profitable. This is what is known as the chicken and egg problem. And that is where the fleet program in S. 1220 comes in.

S. 1220 requires large fleet operators to acquire alternative fuel vehicles in numbers large enough to support the development of the necessary infrastructure.

Make no mistake about it, Mr. President, this program is ambitious. Not everyone will want to give up their familiar gasoline vehicles for a chance to be in the forefront of a transportation revolution. Alternative fuel vehicles cost more than conventional ones. Because most alternative fuels contain less energy per gallon than gasoline, alternative fuel vehicles will have shorter range or else they will need larger fuel tanks, which will reduce marginally at least cargo space. Some fleet operators will have to pay to install their own refueling stations.

We are not unmindful of these criticisms, of these hardships, but there are also some tremendous advantages. For example, with natural gas, the cost of the fuel is much, much less than gasoline, and its availability is tremendous.

As I will speak later in this series of speeches about natural gas, we figure that present supplies of natural gas, at present rates of consumption—that is at the rate of consumption of 17 trillion cubic feet a year—we have over 60 years of readily available supplies of natural gas. And it costs less, considerably less; I think about less than half as much as gasoline per gallon or per million Btu's.

So we ought to encourage its use in vehicles. It is an American fuel, available domestically, produced by Americans, taxed by American Governments, and it provides American jobs. And we ought to mandate and encourage its use to the maximum extent possible.

The Committee on Energy and Natural Resources was not unmindful of these hardships. Throughout its consideration of the alternative fuels issue, the committee sought to balance the need for an ambitious and far-reaching fleet program against the committee's concern for the fleet operators who will be asked to implement it. For this reason, the committee excluded relatively small State and private fleets of 10 to 20 vehicles, which the administration proposed including, and added Federal fleets, which were not covered by the administration's bill. A special provision was crafted to allow diesel truck fleets to preserve the percentage of the fleet now powered by diesel. Exemptions were provided for fleet operators who are unable to acquire alternative fuel vehicles that meet their needs or who cannot obtain alternative fuel supplies and cannot afford to install their own refueling equipment.

While I offered the amendment that added the fleet program to S. 1220 in committee, the amendment has its origins in the work of many others. It drew on Senator ROCKEFELLER'S Alternative Motor Fuels Act, which we passed in 1988. It drew on the work of the Committee on Environment and Public Works found in the Clean Air Act amendments we approved last year. It drew on the President's national energy strategy. And it drew on the Federal fleet program proposed by Senator BINGAMAN in the last Congress and on the fleet proposals in Senator WIRTH's energy bill earlier this year.

We produced an excellent program. I urge my colleagues to look not only at the alternative fleets fuels provision of S. 1220, but at the other provisions: Energy efficiency, discussed yesterday; natural gas, to be discussed tomorrow; and keep tuned, Mr. President, because we will continue to discuss the other provisions of this bill, which is balanced, which is effective, and which will get America off foreign oil and give us energy independence.

In the end, Mr. President, I think the Committee on Energy and Natural Resources produced an excellent program. It is ambitious. It seeks nothing less than a revolution in the way we fuel our transportation system. But it is not arbitrary. It contains safety valves to lessen the burden on those who have to implement it. Most important, it will lead to major national benefits. It will help clean up the air by replacing pollution-producing gasoline and diesel fuel with cleaner burning alternatives. It will lessen our dependence on foreign oil.

Mr. President, the alternative fuel fleet program is but one of the environmentally beneficial energy programs in S. 1220. It is but one of the many reasons why the bill should receive early and favorable consideration by the Senate.

Mr. President, I yield the floor.

Mr. BINGAMAN. Mr. President, several days ago I urged my colleagues to proceed as quickly as possible to consideration of the critically important legislation represented by S. 1220, the National Energy Security Act of 1991. Today I would like to highlight one of the key parts of that legislation—the fleets and alternative fuels provisions.

It is important that these provisions be enacted. As my colleagues are aware, the transportation sector accounts for more than 60 percent of the oil consumption in this country. Increasing the use of alternative fuels will help to reduce our steadily growing dependence on foreign oil and enhance our energy security. The use of alternative fuels will also play a major role in reducing emissions of carbon monoxide and other air pollutants that threaten the health of millions of Americans.

I became convinced of the importance of promoting alternative fuels several years ago when the Environmental Protection Agency found that the largest metropolitan area in my home State of New Mexico, long famous for its pure air, were in violation of air quality standards for carbon monoxide. Carbon monoxide is but one of the dangerous air pollutants that result from cars and trucks burning gasoline and diesel fuel. High levels of these pollutants are a serious threat to public health and the environment. Replacing gasoline-powered vehicles with vehicles that burn cleaner fuels such as natural gas and ethanol can dramatically reduce emissions of these pollutants.

Two years ago, I introduced legislation to require the Federal Government to convert fleet vehicles operating in nonattainment areas to alternative fuels. I am pleased that the provisions of my legislation were incorporated into S. 1220 and that we were able to strengthen the provisions as well. They apply to all Federal fleets, wherever located, not just to fleets in the 22 nonattainment cities. S. 1220 also requires State and private fleets to phase in alternative fuel vehicles.

Mr. President, it is important to note that S. 1220 would make the Federal Government take the lead in converting its fleets from gasoline-powered to alternative fuel vehicles. The President has asked Federal agencies to acquire the maximum practical number of alternative fuel vehicles but exempted Federal fleets from the mandatory purchase requirements of the National Energy Strategy's Fleet Program. S. 1220 corrects that situation. Clearly the Federal Government should require at least as much of itself as it requires of State and private fleets.

By creating a guaranteed market for alternative fuel vehicles, the bill will create the necessary incentive for the development of fuel distribution and vehicle maintenance infrastructure,

the lack of which has been the major impediment to their use. Greater availability of alternative fuels also will encourage the general public to choose such vehicles for their personal use. Both markets will encourage American automakers to step up their production of alternative fuel vehicles.

Mr. President, I commend Senator JOHNSTON for his leadership in developing the progressive fleet and alternative fuels program represented by title IV of S. 1220. Again, I strongly support his efforts to bring this important package before the Senate.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The Senator from Florida is recognized for up to 10 minutes.

Mr. GRAHAM. I thank the Chair.

(The remarks of Mr. GRAHAM pertaining to the introduction of S. 1492 and S. 1493 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

SENATE CONCURRENT RESOLUTION 53—REGARDING ISRAEL'S 1981 STRIKE AGAINST IRAQ'S NUCLEAR REACTOR

Mr. SPECTER. Mr. President, a concurrent resolution was filed earlier this week to express the sense of the Congress that the 1982 Israeli preemptive strike against the Iraqi nuclear reactor at Osirak was a legitimate and justifiable exercise of self-defense and that the United States should seek repeal of U.N. Resolution 487, which condemned that 1981 Israeli preemptive strike.

Mr. President, that resolution has been filed on behalf of 55 U.S. Senators, including the distinguished Republican leader, Senator DOLE; Senator HOLLINGS; Senator MURKOWSKI; and the full itemization will appear in the RECORD.

Mr. President, when the Israelis made their daring, bold preemptive strike on June 7, 1981, that action was taken to destroy the Iraqi nuclear reactor in what Israel said at that time was an act of self-defense. And although many in the world understood the purpose of that preemptive self-defense attack, a resolution was brought in the United Nations and Israel was condemned for that attack, Resolution No. 487.

It is now clear, beyond any doubt, that Israel was justified in that act of self-defense. We know from what has happened since that time, although the evidence was compelling at that time, but since that time there can be no doubt about the intent of Iraq to develop nuclear weapons for offensive military purposes.

We know of Iraq's intent from facts learned after the Israeli strike—from the Iraqi invasion of Kuwait, from the Iraqi mobilization of forces on the Saudi border, from the 39 Scud missile attacks which Iraq launched against the State of Israel without any provocation, without any justification. We know further from what has occurred in the course of the past several weeks, when we have found that Iraq has violated its commitments to the United Nations in terms of inspection of nuclear materials.

So the status of Iraq's aggressive intent, demonstrated by its flagrant violative conduct against Kuwait, against Israel, and against others, now makes it plain beyond any doubt that the intent to attack was present in Iraq back on June 7, 1981.

There is no doubt under international law, as the law governs the relationships among men and women, as the law governs relationships among nations, that a nation or an individual has the inalienable right of self defense, which is one of the most basic principles of law in existence.

Just as any individual has the right to use whatever force is necessary to defend himself or herself, similarly any Nation has the right to use whatever force is reasonably necessary to defend that Nation.

So we see that the action by Israel on June 7, 1981, in eliminating the capability of Iraq's Osirak nuclear reactor, was an act which benefited not only Israel, which certainly would have been subject to whatever forceful means Iraq could have used against Israel, as demonstrated by the 39 Scud attacks earlier this year, but Iraq would have used the same kind of force against its other enemies, as demonstrated by the Scud attacks against United Nations and United States forces in Saudi Arabia.

So what might have been a nuclear Armageddon in the near east was eliminated by the forceful, bold, daring and justified action taken by Israel back on June 7, 1981.

The United Nations exists to promote the cause of peace and justice among nations. The U.N.'s action in condemning Israel for that attack, action taken under Resolution 487, is now palpably wrong and mistaken. And the United Nations should recognize that error and should repeal and rescind U.N. Resolution No. 487.

As noted earlier, the resolution which has currently been filed has 55 cosponsors in the Senate. It is the intention of this Senator and the other cosponsors to move ahead and press for hearings before the Foreign Relations Committee to bring this resolution on for action by the Senate and then, hopefully, for action by the House of Representatives as well, on a measure which I think certainly will be enacted. And then to press the administration to take this matter up. Because not only was the Israeli preemptive attack an act for its own self-defense, but it was, as we know now, an act really for the defense of the entire world.

The experience which we have had with Iraq after the August 2, 1990, invasion puts the world on notice that we must use every means at our disposal to be absolutely certain that Iraq does not proceed to develop a nuclear capability. The heroic efforts by the United Nations under the leadership of the United States in repelling Iraq and ousting Iraq from Kuwait, should not be in vain. As hard as it is to monitor what goes on in Iraq, that must be done. All steps necessary to be sure that Iraq does not proceed secretly must be taken. Because if we come to a situation where Iraq has nuclear weapons, knowing the intentions of Iraq's leaders, we will be putting the entire world at risk.

I compliment President Bush for his leadership on this entire matter since last August. I compliment French President Mitterrand for his forthright statement that France was prepared to take whatever action was necessary, including military action, to be sure that Iraq does not proceed with a nuclear military capability.

No one wants to see a state of war return, a state of belligerency, with the very substantial costs incurred by the United States and the United Nations.

Since making my comments I see my distinguished colleague from California, Senator CRANSTON, is on the floor. A word or two is in order about a very important hearing held by the Veterans' Affairs Committee on Tuesday of this week. We had veterans from the gulf war come in to testify about the tremendous anguish, and the tremendous problems caused by the Iraq war—injuries which are being sustained to this day by the fighting men and women who were there and by their families as well.

As difficult as the military action was, we must take whatever action is necessary to see to it that Iraq does not mount a nuclear military capability, given their demonstrated intentions and given their demonstrated aggressive tendencies. But, as a first step, the action of the United Nations in Resolution 487 condemning Israel should be rescinded and, if anything, a resolution ought to be enacted by the United Nations, thanking Israel for its courageous and proper conduct in destroying Iraq's nuclear military capability. I thank the Chair and yield the floor.

Mr. MURKOWSKI. Mr. President, I rise today to join my colleague from Pennsylvania, Senator SPECTER, and 54 cosponsors to offer a resolution expressing the sense of the Senate that the 1981 Israeli preemptive strike against the Iraqi nuclear reactor at Osirak was a legitimate and justifiable exercise of self defense, and that the United States should seek the repeal of U.N. Security Council Resolution 487 which condemned that 1981 Israeli preemptive strike.

The United States is proud of the allied victory in the Persian Gulf. The al-

lied forces successfully, and with few allied casualties, pushed back Saddam Hussein's military occupation of Kuwait. The allies are now taking on the enormous task of restoring the devastated State of Kuwait. Mr. President, the outcome of the allied force's victory could have been immensely different were it not for the 1981 Israeli attack on Iraq's growing nuclear capability. We owe a long overdue show of gratitude to the State of Israel for the prudent action it took 10 years ago.

The potential of an Iraqi nuclear threat to Israel and surrounding Arab states in 1981 was growing. Experts determined that in 1 to 3 years Iraq would have gained a nuclear threat capability. Iraq possessed the delivery capability with its jet bombers, and short-range and surface-to-surface missiles. If Israel had not taken preventative action against Iraq at Osirak to end Iraq's nuclear threat, the United States and the allied forces could have lost the war, or worse, lost an unthinkable amount of lives to a nuclear attack.

If the United States has learned one thing from this war with Iraq, it is that the threats of a dictator should be taken to heart. Saddam Hussein's naked aggression brought him into Kuwait. As we now know, he would have used any means possible to bomb Israel and the other Arab States, as he threatened to do before and during the invasion of Kuwait. Saddam did not hesitate to send Scud missiles into Israel in an unprovoked attack on innocent civilians. Israel showed great restraint during those attacks in January and February. The course of the war might have been very different if Israel has responded to these attacks with a show of force instead.

The time has come for the United States to seek to repeal the U.N. Security Council Resolution 487, which wrongly condemns Israel's attack on Iraq to prevent their nuclear aspirations. This action not only safeguarded Israel and the United States from a nuclear threat but the allied states as well. Thus, the Congress should also encourage the other nations in the alliance to join the United States in repealing this resolution, and show their appreciation for Israel's past action.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mr. CRANSTON. I thank the Senator from Pennsylvania for his collaboration with me on the Veterans' Affairs Committee in exploring what can be done to deal with the post traumatic stress disorder that is prevalent among an unknown number of veterans at the present time, stemming from the Iraq war. I look forward to collaborating with the Senator on that front as we collaborated on many fronts.

MOTOR VOTER REGISTRATION

Mr. CRANSTON. Mr. President, I rise very briefly to urge an aye vote on cloture and support for the motor voter registration bill that is about to come before us in the form of a cloture vote. We stand for democracy in the world. We should stand for democracy at home.

Registration barriers against voting were enacted in our country after the Civil War as part of an effort to keep blacks and poor people from voting in our country. At that time registration, literacy tests, poll taxes were enacted. They had the effect of keeping people from voting. They were used deliberately for that purpose. In the civil rights days earlier in this century, when Lyndon Johnson was in the White House, we got rid of the poll tax, we got rid of literacy tests. We did not get rid of registration. It deliberately was created as a barrier to voting. It still is used deliberately in some parts of our country as a barrier to voting. In other places it is entirely inadvertent.

Registration may serve a useful purpose in making certain that only people vote who are entitled to vote under the law and the processes of our country. But we should make it much simpler for people to register so they can register without having difficulties in doing so. This measure before us would do exactly that. It would make it possible for people, when getting a driver's license, to simply say they would like to be registered, indicate the party, and they would become registered. That would, apparently, cover about 90 percent of the eligible voters in our country.

The other 10 percent would be registered by what is called agency-based registration, which is also proposed and covered in this law, where they congregate in unemployment lines to get unemployment insurance or to discuss their Social Security problems. They would be given a very easy opportunity to register at that stage.

I urge that this be done. It will strengthen our democracy and it will show when we demand democracy and the right to vote in the Soviet Union and other countries, we are also sincere about making that right possible for people here in the United States.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The time for morning business has expired.

EXTENSION OF MORNING BUSINESS

Mr. THURMOND. Mr. President, I ask unanimous consent that morning business be extended 3 more minutes.

Mr. KENNEDY. Reserving the right to object, will the Senator state his request again?

The ACTING PRESIDENT pro tempore. The Senator is requesting morning business be extended 3 minutes and the vote for cloture be therefore set aside. Is there objection?

Mr. FORD. Reserving the right to object, we have had chairmen who have delayed their committee hearings to vote at 10 o'clock. We have many Senators here who want to vote at 10 o'clock. I hope that no other Senator will ask to extend the time because then I will have to object. I will not object to 3 minutes. I hope the Senator will finish in 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from South Carolina is recognized for 3 minutes.

NOMINATION OF JUDGE CLARENCE THOMAS TO THE SUPREME COURT

Mr. THURMOND. Mr. President, in the near future, the Senate Judiciary Committee will begin hearings on Judge Clarence Thomas for a position on the U.S. Supreme Court. I anticipate that the hearings will be thorough, comprehensive and, at times, contentious.

As we prepare for this hearing, it is important to note that Judge Thomas is not an unknown quantity, having been confirmed by the Senate on four occasions. He was before the committee just 15 months ago, at which time, a complete review of his background, qualifications and professional experience was undertaken. Judge Thomas was overwhelmingly approved by the full Senate for a position on the U.S. Circuit Court for the District of Columbia.

Currently, certain individuals and organizations have raised concerns about Judge Thomas. I believe much of the current opposition is based on the ideology, or judicial philosophy, that these individuals and groups believe Judge Thomas will apply if confirmed to the Supreme Court. Because so much has been said about the question of philosophy, or ideology, I want to comment about this issue within the context of the nominating process.

Some argue that philosophy should not be considered at all in the nomination process, while others state that philosophy should be the sole criteria. It is not appropriate that philosophy alone should bar a nominee from the Supreme Court unless that nominee holds a belief that is so contrary to the fundamental, longstanding principles of the Nation that his or her service would be inconsistent with the essence of this country's shared values. I believe it is inappropriate to reject a nominee based on philosophy alone as there are numerous other relevant fac-

tors that should be considered in reviewing a Supreme Court nominee.

Mr. President, if a philosophical litmus test can be applied to defeat a nominee, then the independence of the Federal judiciary would be undermined. Judges are not politicians who are put in place to decide cases based on the views of a political consistency, but are sworn to apply constitutional and legal principles to arrive at decisions that do justice to the parties before them.

It has been said that since the President uses philosophy to select a nominee, the Senate can use philosophy to evaluate one. A corollary statement should be just as true: when the President does not use philosophy solely to choose his nominee, the Senate should not use philosophy solely to reject that nominee. Historically, Presidents do consider philosophy when appointing nominees to the Supreme Court. That is part of our system of Government; it is the manner in which the American people have an opportunity to influence the Court which so greatly affects them.

The issue of philosophy is not a new one for the Senate Judiciary Committee. In prior discussions regarding a Supreme Court nominee, a prominent member of the committee, a Democrat, stated:

> It is offensive to suggest that a potential Justice of the Supreme Court must pass some presumed test of judicial philosophy. It is even more offensive to suggest that a potential Justice must pass the litmus test of any single-issue interest group.

Another prominent Democrat stated:

> Our examination of [this nominee's] judicial philosophy, that is relevant and important, but we should not condition our confirmation on her agreement with any opinions of ours, so long as her philosophy is within the norms set down by the Constitution itself.

In closing, no nominee should have to pass the litmus test of any particular group. The prerogative to choose a nominee to the Supreme Court belongs to the President—an individual elected by the people of this country. It is important to insure that a nominee possesses the intellectual capacity, competence, and judicial temperament to serve on our Nation's highest court. A Supreme Court Justice, or any other judge, for that matter, cannot be expected to make rulings based on the expectations of any political constituency. To do so would seriously jeopardize the efficacy and independence of the Federal judiciary.

THE TITLE X PREGNANCY COUNSELING ACT

Mr. KERRY. Mr. President, I rise today to express my support for S. 323, the Title X Pregnancy Counseling Act of 1991 which was passed yesterday by the Senate. I am proud to be a strong supporter and cosponsor of this vital legislation.

This bill will overturn the Supreme Court's affirmation of the Bush administration's regulations prohibiting recipients of Federal family planning grant funds from advising pregnant women that one of their options for dealing with pregnancy is pregnancy termination. In my judgment, no one should ever make a decision lightly or hastily to terminate a pregnancy. Such a decision should be reached only based on very careful thought and reflection. However, after much careful study, I remain committed to the position that no one ultimately is better able, and no one has a more compelling right, than a pregnant woman to choose if she wishes to have a child. I believe it follows naturally that physicians and family planning counselors should be permitted to include among the options they present to pregnant women the option of pregnancy termination—which is wholly legal in the United States under conditions enunciated by the Supreme Court.

While I consider freedom of choice to be critical to the health and well-being of the women of this Nation, I find equally troubling the free-speech restraints imposed by the Rust versus Sullivan decision upholding the Department of Health and Human Service's so-called gag rule. The most serious implications of the Rust decision lay in its blatant disregard for first amendment rights. Despite the Court's tortuous reading that the regulations do not force the title X grantee to give up its right of free speech, Justice Blackmun's dissent is absolutely correct. He says, "The majority professes to leave undisturbed the free speech protections upon which our society has come to rely, but one must wonder what force the first amendment retains if it is read to countenance the deliberate manipulation by the Government of the dialog between a woman and her physician." First amendment free speech rights are the most sacred of all the rights guaranteed by our Nation's Constitution. A woman's consultation with her physician must be considered among the most private types of speech protected by the first amendment. If the Federal Government is allowed to restrict the content of this type of speech, then certainly the potential for further intrusions into the private lives of American citizens is great. Today, we have an opportunity to stop the recent trend of increasing restrictions on civil rights by the Bush administration and the Supreme Court. We must act with conviction.

Finally, I am concerned for the physicians of America if the Bush administration's gag rule is allowed to stand. A doctor has a moral and ethical responsibility to give full and informed advice to his or her patients. I have received numerous letters and calls from physicians throughout the State of Massachusetts who are deeply concerned that their ability to perform what they consider to be their ethical duty, giving the full range of medical advice to their patients, will be impaired by the Rust decision. S. 323 will remove that impairment.

Failure of the Congress to resolve this matter will result in a two-tiered health care system. Those pregnant women who can afford private physicians will have no trouble receiving counseling on the full range of legal options available to them regarding their pregnancies. Low-income pregnant women who cannot afford private physicians will be restricted to just those options approved by the Government. Such a situation would be horribly unjust and must not be permitted.

A TRIBUTE TO ROBERT MOTHERWELL

Mr. METZENBAUM. Mr. President, our Nation has lost one of the great artists of this country, who was awarded the President's Award just last year in the White House. My wife and I were there.

Robert Motherwell has left the scene. He was one of the true giants of modern American art. He was a very caring, concerned individual. Whenever he knew there was a problem, Robert Motherwell wanted to be there to be helpful to do what he could to make this world a little bit better place in which to live.

Robert Motherwell died yesterday at age 77.

His impact and influence cannot be overestimated. He will be remembered by history as a brilliant and thoughtful philosopher, an eloquent and insightful writer, an important and provocative political thinker, and most of all, a master painter and an artist whose collages were once called perhaps the most consistently beautiful body of work produced by any artist at that time.

He inspired a generation, and has given pleasure to millions. From Dusseldorf, Stockholm, and Vienna to Washington, Los Angeles, and New York, art lovers bore witness as Robert Motherwell's work broke startling new ground and changed the shape of expressionist art.

From the moment he seized the world's attention in 1941 with his painting "The Little Spanish Prison," through his revolutionary contribution to the abstract expressionist movement, and until the very day this week that his creative energies ceased, Motherwell has remained a cornerstone of his profession, and a treasure to this Nation.

His achievements are too numerous to catalog. His 1965 retrospective at the museum of modern art, his mural com-

missioned by the National Gallery here in the Capital, his collaborations with the likes of Dekooning and Pollock, his "Elegy to the Spanish Republic" series, I simply could stay here for hours and recite this man's monumental efforts over decades.

To his beautiful and devoted wife, Renate, I send my heartfelt condolences.

My wife and I had the privilege of being with Robert and Renate and spent a day up at their home—two lovely, concerned human beings, two caring human beings. This Nation has lost one of its greats. He is irreplaceable.

I yield the floor.

TRIBUTE TO ANITA RABY

Mr. HEFLIN. Mr. President, I would like to pay tribute to Ms. Anita Raby for her outstanding performance as the president of the Alabama Education Association. Anita has recently completed her term as president and all Alabamians can be justly proud of her accomplishments in this office.

Ms. Raby, a native of Limestone County and a social studies teacher at West Limestone High School, is stepping down as the elected president of 69,000 of her fellow educators. Although she will greatly be missed in this capacity, I am pleased that she will continue the fight as a recently elected National Education Association director. Her talents and experiences will be a great asset to that organization as well as the AEA as she remains active on the local, State, and national level.

Perhaps Ms. Raby's most important accomplishment as President was to extend the term for future presidents from 1 year to 2 years. This change will allow future presidents to learn their jobs better and give them time to use this knowledge to improve our education system. Anita also played a large role in the negotiations with Governor Hunt's administration over the school reform package. She has helped smooth the transition to the new AEA building. This addition and the renovations to the old building will provide much-needed office and meeting space for the association. I know from experience that Ms. Raby serves as an effective representative for AEA when she travels to Washington. She has been an ardent supporter of increased funding for schools and one of her favorite programs to eliminate drugs from our schools.

Mr. President, I congratulate Anita Raby on the stellar record she built during her tenure as president of the Alabama Education Association. Although her leadership will be missed in Montgomery, her students in Limestone County and the National Education Association will benefit greatly from this change. I wish Anita the best of luck and look forward to her continued success.

THE BUDGET DEFICIT

Mr. HOLLINGS. Mr. President, I note in this morning's Washington Post that the distinguished columnist, Jim Hoagland, who usually writes on foreign affairs, is writing about the widespread joblessness in the United States.

Then I read, on the same page, another distinguished writer Hobart Rowen. Hobart Rowen quotes Felix Rohatyn, as saying, "If I were 30 years old, I would move to Europe." Rohatyn came to America as a teenager, and became a tremendous success as a financier. He masterminded the resurrection of New York City's finances in the mid-1970's. Permit me to quote from Rowan's column:

> Impressed by what he saw in preparation for "Europe 1992" on a recent swing around the continent, Rohatyn—senior partner of Lazard Freres—said he felt that he was "leaving the New World and coming back to the Old World" as he stepped aboard a plane in London for New York.
>
> The American economy, he argues, "is going no place. The assumption is that all the problems are too hard to tackle. We say we can't do anything about the real issues, like education, health, so no one even talks about them. Washington is pushing everything back to the state and local level.
>
> "But Europe is forward-looking, driven by a confident government-business partnership. They want to widen out the frontiers. People are thinking about and accepting a United Europe. Sure they have problems, but they assume they can be dealt with."

These are stunning comments by Mr. Rohatyn.

And then I turn to the main news section of the morning Post. I see a former Senator, now Governor, facing fiscal reality in a courageous and forthright manner. You will not find direction in a political poll for what Governor Wilson is doing in California. It's called leadership, and it has nothing to do with polls and popularity. Polls Vask simplistic questions: Are you for jobs or against jobs; are you for taxes or against taxes; are you for America, and against America? And the obvious answer is yes, we are for America. But what does that tell us?

We live in an unreal cocoon here in the Congress, and it clashes with the real world outside. Here we run away from our fiscal problems, we obfuscate and ignore. What a contrast is presented by our former Senate colleagues who are now serving as state chief executives. I read from this morning's Post:

> Wilson, who signed budget legislation 16 minutes before a midnight deadline, said today he found the tax increases "distasteful" but declared there was "a requirement of law and logic not to paper over the deficit" with accounting gimmicks or further spending cuts.

He was criticized for taking this course. I further quote Governor Wilson in his rebuttal:

> I don't have a lot of respect for screaming comments made by people who don't want to participate in the process * * * the easiest thing in the world to do is to hunker down and say no new taxes.

Wilson then observed that the deficit was estimated at $7 billion when he took office. He initially tried to close the gap with spending cuts alone. He proposed his tax package only after successive estimates more than doubled the original deficit estimate.

Oh, how I wish we could get Governor Wilson to come back as Senator Wilson and let him talk sense to this crowd. Let him talk to this crowd, and instruct us, in his eloquent words, that there is a requirement of law and logic not to paper over the deficit.

Once again, we witnessed the Federal "Paper Over" Act earlier this week. First, on July 15, the OMB put out its midsession review of the budget. It is a big booklet; you cannot find what the deficit is until the last page, page 55. When you look on page 55, they do not directly cite the deficit. They say: on-budget deficit; off-budget deficit; a surplus or deficit for 1991 is $338.3 billion.

One chart tried to obfuscate the real deficit number by talking about, and I quote, the "Deficit Excluding Off Budget Surplus." That is a discovery, Senator, to find the word surplus in Washington. I know we have not had a surplus since the calendar year 1968, fiscal year 1969.

You see, when you have surplus trust funds that you borrow from, those are slush funds to be raided. When you borrow from the Japanese in order to finance the deficit, that counts. Oh, yes; when you borrow from the Japanese, we list it as a deficit.

But when you borrow from American senior citizens and their trust fund; when you borrow from highway users and their trust fund; when you borrow from the airport and airways trust fund or from the Medicare trust fund, then it artificially reduces the deficit, it hides the true deficit.

Meanwhile the cupboard is stripped bare with regard to the trust funds. Specifically, Medicare, they plan to cut back benefits and services even further. We are closing down hospitals and clinics. The game is to increase the Medicare trust fund surplus so we can borrow from it to mask the deficit. So the trust fund is being used as a slush fund. But if you borrow from the Japanese, that truly counts in the deficit, so we prefer to avoid it.

We wanted to cut out that monkeyshine, "we" being the Congress and including the President. Last year, he signed it into law—that we could no longer list Social Security surplus funds in that deficit in order to artifically reduce the nominal deficit. But, no. The director of OMB, who is an astute accountant, does not abide by that legal requirement. He refers to it as on budget and off budget.

So he says that with the trust funds on budget the deficit is $348.3 billion, and with trust funds off budget the deficit is at $412.1 billion.

Post reporter John Barry talks about budget ballyhoo. He starts with the headline, which is: "Ballyhoo: Shortfall To Hit $348 Billion."

Writes Mr. Barry:

The Bush administration raised its estimate for next year's Federal budget deficit by nearly $70 billion to $348.3 billion, by far the largest in the Nation's history.

Later Mr. Barry writes:

The long string of big deficits indicates that if last fall's much ballyhooed budget deal between the President and the Congress had any impact on reducing the budget deficit, it was not enough to bring——

And it goes on and on.

The worst ballyhoo is in that headline, $348.3 billion, because the truth of the matter is the deficit is $412.1 under the law.

Then the same writers that pick up that line of baloney, misleading nonsense, they call it ballyhoo, but they are amplifying the ballyhoo.

In contrast, Pete Wilson out in California—now Governor Wilson—is governing in the real world. He would be ridiculed and criticized here in Washington for using the word taxes. But California has had some real problems, with a dropoff in their economy, a dropoff in the defense industry, and so on. So Governor Wilson, who did not create this mess, insists on governing in the real world. That is what we are trying to get this Congress to do, to come up with the real deficit figures and find out where the waste is.

Mr. President, I think a good way to find that waste is to look at a chart published by the Banking Committee, referring to the S&L losses, the RTC, the Resolution Trust Corporation losses, the interest expenses, the working capital loss, and so on. If you look at that chart, you see where the best campaign financing is.

When you pay your income tax, 60 cents of every dollar goes for interest costs. That amounts to a good slush fund to reelect all of us, because it allows us to get away with this "read my lips, I am against taxes, I am a nice fella." So we run up the deficit, and just pay the interest. And so there we are, and we just keep on up and up with interest costs. It is the biggest waste, biggest fraud, biggest abuse.

You can see from the $700 billion S&L industry cleanup, which has gone from $5 to $700 billion; a $57 billion S&L loss; a $160 billion RTC loss, and working capital loss of $40 billion. So you have $257 billion for the actual loss, but $425 billion in interest payments for not facing up to the problem on a pay-as-you-go basis. Instead, we say put it on the next generation's budget. Just borrow the money and go willy-nilly into deeper debt.

When this thing hit us, the recommendation was to do as we did back in 1968, put on a surtax. When we got to the war in Vietnam, President Johnson said we are going to pay for it and for the Great Society programs. He put on a 10-percent surtax and gave President Nixon a balanced budget; in fact, a $3.2 billion surplus. We could have made the S&L bailout a less than $200 billion loss by facing up to the problem. But, no, no, read our lips, we are against taxes; instead, we are just for waste, we are for interest taxes. Interest taxes grow by leaps and bounds. Right now, that little machine tracking the national debt in downtown Times Square says $3.5 trillion. Simply to pay interest on next year's interest, we will have to increase the 1992 deficit by up to $30 billion. Nobody will talk about this waste. That is $30 billion for absolutely nothing, total waste. So it is just one big political charade that we have going on.

I thought we ought to make note of the leadership that Governor Wilson has given his State. I wish he would come back here. I am happy to praise a Republican when I see him living in the real world, and I want to introduce Governor Wilson back to the Senate. I want him to come back here, and give a speech on budget in which he says that "A requirement of law and logic, is not to paper over the deficit." That is exactly what we have been doing. We continue to paper over it. The OMB Director comes and says, and I can quote, that the budget trend is favorable; we are headed in the right direction. The President says we are headed in the right direction; that we finally put the Government on a pay-as-you-go basis, and we are reducing the debt $500 billion. Yet the truth of the matter is that when we look at the report this week, we see that we have increased the debt by $700 billion. We are going absolutely in the wrong direction, and this waste has to stop. I thank the Senator.

Mr. HELMS. Will the Senator yield?

Mr. HOLLINGS. I will yield.

Mr. HELMS. Just for one word. Amen.

Mr. HOLLINGS. Thank you, Brother. Amen.

BOYCOTTING THE NEW YORK YANKEES?

Mr. MOYNIHAN. Mr. President, the Members of the Senate are familiar with the Arab League boycott of Israel as well as the secondary and tertiary levels of this boycott that forbid business with any company that does business with Israel or even with any company that does business with any company on the boycott list.

Compliance with this boycott has been outlawed by Congress, but the Arab League continues to issue updated lists of forbidden companies. The most recent of such lists was released recently and I rise to report to the Senate that the New York Yankees have earned the rare distinction of being the first major league franchise to be placed on this list.

New Yorkers are justly proud of the New York Yankees and their accomplishments through the years. It is hard to understand why the Yankees have been selected for this latest distinction. Is it because an old and unforgiving Brooklyn Dodger fan is employed in the Arab League boycott list office? It is also difficult to understand what the Arab League hopes to accomplish. Does this mean that the Yankees can't hold spring training in Riyadh?

We may never know. But we do know that this latest incident reveals the futility and sustained foolishness of the entire Arab League boycott effort and demonstrates yet another good reason why the Arab States would be well advised to end this offensive practice.

I ask unanimous consent to place in the CONGRESSIONAL RECORD last week's Jewish Week article concerning the New York Yankees and the Arab League boycott.

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

[From the Jewish Week, July 5-11, 1991]

AN ARAB CURVE

(By Stewart Ain)

Holy cow! The New York Yankees have been black-listed by the Arab League.

The Yankees are No. 288 on a partial list of about 300 American firms on the Arab League's boycott list. Nobody knows why, least of all Arabs in the United States.

The list was obtained by the American Israel Public Affairs Committee, according to William Rapfogel, executive director of the Union of Orthodox Jewish Congregations of America's Institute for Public Affairs.

"It was a big surprise when we saw it," said Rapfogel. "It's really mindboggling."

Officials of AIPAC declined to comment on the list.

In the past, the Arab League boycott has been aimed at companies that are viewed by the Arabs as pro-Israel or that do business with Israel.

"What could the Yankees possibly have done to offend the Arabs, except not hitting?" asked Will Maslow, editor of the Boycott Report, which keeps track of Arab boycott activities for the American Jewish Congress.

He added that if batting is the criteria, "maybe the Mets should also be on the list."

"Does this mean Arab fans are not going to come to our games?" asked Yankees' attorney David Sussman.

"The only reason I can think of for the Yankees to be boycotted is because a very high percentage of Yankee management is Jewish," he said. "Our chief executive officer is Leonard Kleinman, Arthur Richman is the senior vice president and I'm the attorney."

Former Yankee first baseman and designated hitter Ron Blomberg was equally astonished by the news.

"To boycott the Yankees because of Jewish employees I think is the craziest thing in the world," he said. "I'll bet there are just as many Jewish employees at the Mets . . . I think it's just foolish, to be honest with you."

Mel Allen, known as the "Voice of the Yankees," said it "sounds ridiculous to me

. . . I don't know what the Arabs have to gain."

Asked why he believes the Yankees were singled out from other sports teams, Allen said: "They are part of the national pastime and, in the overall, they are still thought of as perhaps the most popular sports team in the country."

He added that although many Yankee executives are Jewish, the team's principal owner, George Steinbrenner, is not. On the other hand, he said the Chicago White Sox's two principal owners are Jewish.

Among the other American companies on the Arab boycott list, which is reportedly the first updated only to be obtained in many years, are Aetna Life and Casualty, AT&T, Bell Telephone Laboratories, Comsat, Mattel, Ford, NCR, Colgate Palmolive, Avis, Avon, Paramount Pictures, Du Pont, American Express, Bulova Watch, Helena Rubinstein, Chrysler, Colt Industries, Hughes Aircraft and the California Pretzel Co.

"This list is useful because it lets our people know who is on the Arab blacklist at a time when we feel the boycott is somewhat on the ropes," said Rapfogel. "Unfortunately, although it's still very active, we have for the first time in a long time some cautious optimism that it may be falling apart.

He noted that earlier this year Toyota, Nissan and Mazda asked the Saudi Arabians and Kuwaitis "whether it would be okay to sell their cars to Israel and they apparently said okay.

"Both the Kuwaitis and the Saudis unquestionably participate in the boycott, but they have been made to feel extremely uncomfortable now that the U.S. saved them [in the Gulf war]. As a result, they are rethinking whether they can fully participate in the boycott the way they once did."

Rapfogel said he and others who have analyzed the boycott list "haven't the slightest clue as to why some companies are on there. The only thing we can do is speculate that they had something to do with Israel, but we don't know what.

"But to include the Yankees is the most hysterical thing of all. That only shows the boycott is based on intolerance and ignorance of the Jews. They may have included the Yankees in the mistaken belief that Steinbrenner is Jewish. They didn't include the White Sox because they didn't know [the team] is owned by Jews. That's a perfect example of what the boycott is all about."

M.T. Mohdl, president of the American-Arab Relations Committee in New York, said he too was puzzled by the action, "I decline to even speculate why," said Mohdl, "The wisdom or the lack thereof of Arab policy is known only to God, and I'm not a god."

Abdallah, Shelh, the Arab League information officer in Washington, said he had "no knowledge about such things. Our office does not deal with such matters."

Asked if boycotting the Yankees would foster a better relationship, he replied: "I have no idea about such things."

Rapfogel said he's confident that being boycotted by the Arab League will not have an adverse impact on attendance at Yankee games.

"If it were not such a serious matter, it would really be funny," he added.

MARIO CHANES DE ARMAS

Mr. GRAHAM. Mr. President, I rise today to join freedom-loving Cubans throughout the world in celebration of the release of Mario Chanes de Armas, who has been incarcerated for 30 years as a political prisoner in Castro's jails. I am sure this long-overdue news of Mr. Chanes' freedom is a cause for rejoicing which is shared by my colleagues in the entire Congress. We eagerly await his arrival in the United States for a speedy reunion with his loved ones and friends, all of whom have suffered the pain of separation.

The tyranny of Fidel Castro, which victimized Mr. Chanes for an unprecedented length of time, still grips Cuba. Civil, political, and other fundamental human rights violations continue to plague that island nation. It is incumbent upon us to demand restoration of the most basic of human rights for Cuba's entire population.

While we celebrate today the release of the longest held plantado, we must not forget all the other political prisoners which Castro has deprived of freedom during his dictatorial reign. We must keep an international spotlight on the oppressive and tyrannical rule of Fidel Castro.

Let us call today on all the citizens of the world to demand that Cuba be allowed to join the community of free nations. Let that call go out from all corners of the globe to repudiate the Castro regime's inhumanity and persecution of its people. Let the Cuban people themselves decide if they want Castro to be their leader. Let the Latin American leaders meeting in Mexico voice this plea and insist that liberty and justice be restored to the Western Hemisphere's anachronistic holdout of totalitarianism, Cuba.

From Washington to Florida and around the world, let the keys to freedom and democracy open the cells of oppression for all the remaining Cuban political prisoners and for the entire population of the beautiful island of Cuba. Mr. President, we humbly offer this tribute in respect and admiration for Mr. Mario Chanes de Armas, a man whose sacrifices and staunch convictions should inspire us all.

LITHUANIA

Mr. PRESSLER. Mr. President, the protection of human rights is an international responsibility. These rights must be guarded vigorously. As the leading upholder of democratic ideals in the world, the United States shoulders a major role in human rights issues. Ironically, the concern for human rights has found expression even in the relations between two balloon associations, in America and in Lithuania. Who could have imagined, several years ago, that Lithuanian and American balloonists would reach across the miles to find common ground?

I was prompted to speak on this issue by a particularly heartrending letter I recently received. It was sent to me by the internationally renowned Soukup and Thomas Balloon Museum in Tyndall, SD. The letter was written by Violetta, a Lithuanian woman who described the terrible events which took place in the Lithuanian city of Vilnius on January 13, 1991. As chairman of the Lithuanian Balloon Association, she met Mr. Jacques Soukup, Mr. Kirk Thomas, and Becky Pope at a balloon rally in Vilnius in the fall of 1989. When I spoke with them about their experiences in Lithuania, they stressed the breathtaking beauty of that country, the warmth and generosity of the people there, and the fervent democratic aspirations of the Lithuanian people.

After the rally, the South Dakotans invited Violetta to visit them at a balloon fiesta which was to be held in South Dakota. Her balloon was the first Soviet balloon ever to enter the United States. Thus, a connection was made between the balloonists and cross-cultural ties were established. Consequently, Violetta turned to these two men to share her grief over the events of January 13. She described the frustration and desperation she and her fellow Lithuanians felt in their struggle for independence and freedom from Soviet repression. Violetta's plea was heard in South Dakota, and I am grateful to Jacques Soukup, Kirk Thomas, and Becky Pope for sharing her letter with me.

Mr. President, we were all horrified to see the bloody pictures depicting the terrible events of January 13, 1991. Soviet soldiers mercilessly beat and killed innocent civilians. Soviet troops opened fire on innocent civilians in Vilnius, killing at least 14 and wounding over 100. Then on January 20 in Latvia, Soviet Black Beret special forces attacked the headquarters of the Latvian Interior Ministry in Riga, leaving 4 dead and at least 11 injured. Those actions "offend America's deepest values," as Dr. Henry Kissinger was quoted in the Washington Post of January 22. We cannot remain silent when Soviet forces treat so brutally human beings who are struggling for freedom and the realization of democratic values in which we believe so strongly. These actions contradict Soviet progress on human rights. I hope they do not signify a reversal of that progress. The Soviet Union must establish its legitimacy to the rest of the world in human rights.

Those who have been watching and encouraging President Gorbachev must be sure not to lose sight of what is occurring in the smaller Soviet republics, such as the Baltic States and Moldavia. The use of brute force against people who peaceably seek democracy and independence is unacceptable. At the very least, we must make the Soviets aware that we do not approve of their repressive tactics and that continued use of such tactics creates serious obstacles to further improvement of United States-Soviet relations. The So-

viets seek better relations with us. However, that is not possible so long as they abuse basic human rights. The Soviets stand at a threshold. They must make a decision whether to continue their current policies of aggression and repression, or to move toward genuine democratization, which means allowing freely elected governments to follow their chosen paths. A choice must be made.

Mr. President, I sincerely hope that Violetta and her fellow Lithuanians achieve the freedom they desire. All three of the Baltic States deserve governments and a way of life of their own choosing.

I ask unanimous consent that the letter from Violetta appear in the RECORD.

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

DEAR KIRK: I hope you have heard about the events in Lithuania and as you have been here you can understand our determination to be free and independent perfectly well. Almost for the whole month I have not written any letters as I could not take a pen and a sheet of paper to do it. My heart was aching, my mind was empty of any words except of sorrow and sympathy for the dead. Among them there are two students from our university. Examinations have been postponed and our students kept vigil in Vilnius. The nightmare started on the 11 January when Soviet commandoes stormed the Press House and the first Lithuanian was wounded in the face with the hollow-nose bullet; on entering the body it tears it to pieces. After that people went to Vilnius to keep vigil there. My mother was there on the 13 of January but thank God she was at the Houses of Parliament at that crucial moment when the Soviet commandoes stormed the TV tower and radio committee in the early morning hours. She and the rest of thousands of people heard the shooting, explosions, and knelt and prayed as nothing could be done. There were lots of children and women at the Parliament, they were asked to leave the place by the MP's but nobody moved. The tanks came, stopped, searched the crowd with powerful, blinding lights but did not attack. They did not expect such determination of the Lithuanians. What concerns me, I almost went mad during that night. I did not sleep and eat for several days. That fatal night I watched TV, I saw the announcer with wide opened and horrified eyes, heard the shooting and swearing in Russian on TV, then they turned secret TV cameras on and we saw Soviet soldiers kicking and beating people in the corridors of the TV tower. Then everything went dark and silent. At the same time the radio transmission died and I heard the last words "we are still alive" were heard. And then the church bells began to toll and the sirens were turned on and it is difficult to describe what I felt. I went trembling, my hands and feet were icy, I was on the verge of a nervous breakdown. Everybody came to the town municipality to hear the news, there we learnt that the Parliament was functioning. Thank God there was a new TV station opened in Kaunas and it is the only one after almost the whole month. The Soviet soldiers still occupy the buildings they attacked on the 13 of January.

Gorbachev went too far. He decided to teach those "naughty" Lithuanians and now like Pontius Pilate is washing his hands openly. The impudent Russian democrats ask him what these red spots on his Novel dinner jacket mean. Those are spots of the bloodshed, of 580 people injured/impaired hearing because of the explosive grenades, mass legs under the armed cars, mounds of bullets and shells, and 15 people killed. The last one was shot only several days ago in the head by the soldiers. Though Gorbachev says that the troops have been withdrawn from Lithuania, that is a complete lie as everything else he says. The curfew exists in Vilnius and now the martial law is being imposed though it is illegal from both the Lithuanian and Soviet constitutions' point of view. We live under a great nervous tension that is being imposed by the Soviet Army and the Communists.

What is this and why is this? Who can we rely on? Who will understand? Who will hear our cry? Iceland was the first to hear but its mouth was shut by the Kremlin. Well, who will help us in our uneven struggle with the red dragon? We have been receiving only moral sympathy and help which helps Gorbachev to do whatever he likes in Lithuania and other Baltic states. We are left all alone. But God gives us strong determination and endurance. We have got our land, our language, our history and culture. We have got a strong desire to be free and independent. We have got wisdom and prayers to God. When the tanks were approaching the Houses of Parliament, thousands of people who were there knelt and prayed though they had been asked to leave the place. None moved while the tanks with their strong lights searched the crowds. I hope we shall survive.

I am sorry my letter is very emotional but I cannot do otherwise. I want everybody to know how things are going on here.

Hope to hear from you. Now I shall sign off.

Sincerely yours,

VIOLETTA.

APPOINTMENT BY THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair announces, on behalf of the majority leader, pursuant to provisions in Public Law 102-62, the appointment of Gordon M. Ambach, of the District of Columbia, to the National Council on Education Standards and Testing.

S. 250 THE NATIONAL VOTER REGISTRATION ACT

Mr. STEVENS. Mr. President, S. 250, the National Voter Registration Act, is a good faith effort to make registering to vote easier.

The goal of the bill's proponents—to increase voter turnout—is a goal shared by everyone in this Chamber.

THE MOTOR VOTER REQUIREMENT

Most States also share the goal of providing their citizens an opportunity to register to vote when applying for a driver's license.

In fact, fully 27 States and the District of Columbia provide citizens an opportunity to register at their Departments of Motor Vehicles.

Furthermore, legislation was introduced in 17 other statehouses to establish some form of motor voter or agency based registration system.

States are enthusiastic about such programs. Fully 44 States have already instituted the concepts required by S. 250 or have bills before their State legislatures to begin them.

The enthusiasm of the States, however, is not translated into enthusiasm for the requirements of S. 250 because of the cost it entails.

The April 1991 Fiscal Survey of the States shows that 32 States are running a combined deficit of over $15 billion; 26 States are raising taxes by over $10 billion, the highest increases in the survey's history.

Another study shows that more than 25 percent of all major U.S. cities face a deficit exceeding 5 percent this year. There is simply no additional money for the unfunded mandates S. 250 will impose on State and local governments.

Thirteen States with over 36 percent of the Nation's population have told the Rules Committee that they have problems with the way this bill is written and the financial burden it would impose.

Ten of these States estimated their costs under S. 250 at over $87 million. My own State of Alaska estimated that these requirements will mean the equivalent of a 28-percent increase in the budget of its election division. This is despite the fact that Alaska already has all three forms of registration programs required by the bill.

Here is a list of the State and local government organizations that have criticized the unfunded mandates imposed by this bill:

The American Association of Motor Vehicle Administrators;

The National Association of Secretaries of State;

The National Association of Towns and Townships;

The National Governors Association; and

The National League of Cities.

These State and local government organizations are concerned because they know that programs like child nutrition or health care will have to be cut to pay for this bill.

Imposing these new costs on States is particularly hard to justify given that a link between the registration programs required by S. 250 and actual increases in voter turnout does not exist.

CRS looked at what happened in those States which adopted motor voter programs. In 7 of the 10 States with motor voter, turnout dropped. For all 10 States, voter turnout went down by 2.68 percent.

For the five States that have the more active form of motor voter somewhat similar to the requirement in S. 250, turnout in Presidential years went down by 6.21 percent. For non-Presidential elections, those States experienced a small increase of about one-half of 1 percent.

I support the idea of providing an opportunity to register to vote when ap-

plying for a driver's license, but this bill goes far beyond that proposition.

The bill forces States to register anyone who applies for a driver's license unless they specifically State in writing they don't want to register.

This automatic registration procedure will be expensive because the population elgibile to receive a driver's license is far larger than the population eligible to vote. It is expensive to sort out all of the ineligible voter registration applicants who will inadvertently register to vote.

People eligible to drive but not eligible to vote include everyone under 18 years old, convincted felons, and all out-of-State residents such as military personnel, students, temporary workers, and aliens.

Supporters claim sorting out ineligible applications is not a problem for the States who have motor voter now. The reason most States do not have this problem is because most States with motor-voter programs do not have the automatic registration feature required by this bill.

In fact, virtually all States that have motor-voter programs now would have to change them at tremendous expense to comply with this act.

The automatic registration requirement also increases the chances for inadvertent registration that could disqualify people for home State benefits. For example, students from Alaska that attend college in another State often are required to get driver's license in other States.

If S. 250 is enacted, and these students don't decline to register to vote when getting a driver's license, they will forfeit their scholarships, and could end up paying income taxes in the other State.

THE MAIL REGISTRATION REQUIREMENT

The bill would require all States to accept and process voter registration cards sent through the mail. Section 9(b)(3) of the bill also prohibits mail registration applications from including "any requirement for notarization or other formal authentication."

The Department of Justice warned the Rules Committee about mail registration under this bill. It wrote that S. 250:

> * * * would impose a sweeping requirement to allow mail-in registration while simultaneously limiting significantly the ability of the States to use a variety of techniques to verify the applicant's identity and eligibility.
>
> For this reason, S. 250's provision for registration by mail would entail a substantial and perhaps prohibitive risk of enhancing the opportunities of fraudulent registration and voting.

The Justice Department has good reason to fear the fraudulent effects of nationwide mail registration.

New York now has mail registration. After an investigation of systematic vote fraud in Kings County, NY, a grand jury concluded that mail registration, instituted in 1976, had become: "The principal means of perpetration election fraud" in New York.

The New York problem is so serious, that in 1988, Elizabeth Holtzman, a district attorney in New York, complained in the New York Times about "How easy it is to vote illegally" in that State.

Elizabeth Holtzman called for implementation of the grand jury recommendations which included a change in mail-in registration. Unfortunately, her pleas cannot be answered if S. 250 is enacted. This is because the bill would specifically forbid the changes to New York's mail registration called for by the grand jury.

West Virginia now has mail registration. After a series of indictments for voting fraud just last month, many election officials in that State want to get rid of mail-in registration.

This is a headline from a June 1991 Charleston Gazette: "Officials Criticize Postcard Registration; Voter Fraud Case Points to Misuse"

In this case, a special prosecutor said:

> One of the conclusions of this grand jury was that the mail-in registration system should be abolished as soon as the legislature can take action.

If S. 250 is enacted, a decision by the West Virginia Legislature to end mail-in registration will be in vain. S. 250 means that we will void the action of the West Virginia Legislature and force that State to continue a system being used to steal elections.

If mail registration was required in Illinois, one of the Justice Department's largest prosecutions of vote fraud would not have taken place.

Those who want to register today in Chicago must appear in front of registrars and may have to show identification. With S. 250, such precautions would be illegal.

If this bill passes it is likely that mail registration would quickly become the "principal means of perpetrating election fraud" in Chicago.

California experienced fraud with mail registration; that State had to hire a full time investigator to sort out bogus registration cards the State received through the mail.

Alaska requires postcard applications to be signed by two individuals over 18 years of age. Alaska's Governor wrote that this requirement is needed to heighten "the registrant's awareness of the serious nature of the voting laws." Alaska's witness precaution would be prohibited under the bill.

Alaska also requires out-of-State voter registration applicants to provide "identification or other documentation that supports * * * a claim to Alaska residency." This provision helps ensure that out-of-State nonresidents cannot bootstrap a claim to Alaskan State benefits from non-Alaska locations by filing phony registration applications through the mail. This bill would specifically prohibit this Alaskan precaution.

Another election fraud problem is noncitizens voting. The immigration and Naturalization Service examined a sample of ballots cast by foreign born voters in a 1989 U.S. House of Representatives special election. Fully 11 percent of these sample ballots were cast illegally by noncitizens. INS, also said the percentage of fraudulent ballots in the sample could be as high as 24 percent.

One way to prevent noncitizen voting in Federal elections would be to ask for documents establishing citizenship at the time of registration. Unfortunately, under S. 250's mail registration requirement, it would be illegal under Federal law to ask for proof of citizenship during registration.

In an effort to counter the threat of increased opportunities for fraud from S. 250's mail registration requirement, the bill would permit States to require new voters who have registered by mail to vote in person when they cast their first ballot.

This is not an effective precaution. First time, in-person voting turns the purpose of voter registration requirements in advance of elections upside down.

The reason most States have such requirements is to determine eligibility to vote prior to an election when there is time available to check the qualifications of a voter. S. 250 will mean States will have to determine a voter's eligibility on the day of election. This verification will have to be done by poll workers who may or may not have the qualifications to make such judgments.

THE AGENCY OUTREACH REQUIREMENT

The bill requires registration of applicants who use public assistance offices. The Justice Department wrote the committee that its experience:

> "* * * Demonstrates that public officials sometimes use their power to dispense or withhold benefits in order to pressure citizens into voting a particular way or registering for a particular party. S. 250 would increase substantially the opportunities for such intimidation and coercion of the public."

The Justice Department is not writing about a hypothetical problem.

Recently, the St. Louis-Post Dispatch reported on an investigation into allegations of political manipulation of public assistance recipients. In this case, public employees allegedly were registering public assistance applicants for one political party and telling them who to vote for. The public employees also allegedly drove public applicants to the polls. This abuse has apparently been going on for decades.

S. 250 would require public assistance employees across the Nation to become actively involved in the administration of elections and the result will be more

manipulation and abuse of public assistance seekers.

Even if we don't have evidence of manipulation of public assistance recipients, S. 250 creates the appearance that assistance is linked to participation in the political system. This violates the American tradition of voluntary political participation. It is a bad idea and the Senate should reject it.

CONCLUSION

We should reject this bill because it will federalize the 18,000 separate election jurisdictions without doing anything to increase voter participation. Such federalization will lead to unnecessary expenses and will greatly undermine the integrity of American elections.

Senator DOLE and I have introduced a substitute which provides for grants to States to help them set up motor-voter programs.

This substitute is preferable to S. 250. Under it, motor voter will cost far less than S. 250 because the program will be more flexible. The substitute will not require mail registration and therefore will not increase the opportunities for vote fraud.

I urge my colleagues to oppose S. 250 and take a close look at our substitute when it is offered.

Thank you Mr. President.

S. 250—MOTOR-VOTER BILL

Mr. MCCONNELL. Mr. President, what I am about to say is heresy to some: The motor-voter bill is a solution in search of a problem.

To those for whom voting is the hallmark of good citizenship what I have said is blasphemy. Others, albeit few dare say so publicly, have joined me in saying relatively low voter turnout is a sign of a relatively content democracy. Low voter turnout is not indicative of impending doom or a nation in decline.

Behind every poll showing pessimism over the country's future is the reality that people are relatively content and optimistic about their own lives. A review of Gallup polls from 1979 to 1990 reveals that while the percentage of those satisfied with the direction of the country as a whole ranged from a low of 17 to a high of 66, a consistently solid 80 percent were satisfied with their personal lives.

While people believe government at all levels is incompetent at best, they nevertheless perceive elections and voting as marginal to their lives. Perhaps there is some cause-and-effect relationship there.

Charles Krauthammer expressed this view rather eloquently last year in an editorial for Time magazine. Mr. Krauthammer stated:

> * * * when almost every pundit wrings his hands in despair at low voter turnout—some even feel obliged to propose creative schemes to induce people to vote—I am left totally unmoved. Low voter turnout means that people see politics as quite marginal to their lives, as neither salvation nor ruin. That is healthy. Low voter turnout is a leading indicator of contentment. For a country founded on the notion that that government is best that governs least, it seems entirely proper that Americans should in large numbers register a preference against politics by staying home on Election Day.
>
> A few weeks ago, a producer from public television came to ask my advice about planning coverage for the 1992 elections. Toward the end, she raised a special problem: how to get young adults interested in political coverage. I offered the opinion that 19-year-olds who sit in front of a television watching politics could use professional help. At that age they should be playing ball and looking for a date. They'll have time enough at my age to worry about the mortgage and choosing a candidate on the basis of his views on monetary policy.
>
> To say that, of course, is to violate current League of Women Voters standards of good citizenship. Let others struggle valiantly to raise the political awareness of all citizens. Let them rage against the tides of indifference. They will fail, and when they do, relax. Remember that indifference to politics leaves all the more room for the things that really count: science, art, religion, family and play.

In another well-reasoned, intelligent article, James Kilpatrick argued:

> It seems to be taken for granted that a massive turnout of voters on election day is a good thing, a wholesome thing, an altogether splendid thing. Registering to vote is seen as a civic virtue. I view these assumptions as piffle.

Like these observers, I do not advocate low turnout, I just recognize it for what it is. And what it is not. It is not the most pressing issue of our time.

There is some irony in the professed concern of my colleagues across the aisle over the level of political participation. They passsed a campaign finance bill just 2 months ago that blocks citizens from participating in the process via limited and disclosed contributions to the candidates of their choice. To completely remove citizens from campaigns, 39 Democrats voted for full taxpayer funding of general election campaigns.

Mr. President, for the interest of Senators who support spending limits and the bill before us, I would like to make an observation about my State. The 1986 and 1990 Kentucky Senate races provide a contrast in spending and voter turnout. Both off-years, yet 239,000 more voters turned out in 1990 than 1986—a 35-percent increase. It is not coincidence that the 1990 race was more competitive, and expensive. It was also more interesting to voters, a clear choice between two ideologies.

The 1986 Senate race was virtually uncontested and within S. 3's spending limits. And a lot fewer Kentuckians bothered to vote.

The majority's campaign finance bill also severely limits the political parties' ability to conduct get-out-the-vote activities. As David Broder wrote in the Washington Post on June 2:

> * * * the Senate bill (and likely the House version as well) threatens new restrictions on state parties, limiting contributions they can accept for coordinated registration and get-out-the-vote campaigns. These efforts are at the heart of electoral democracy, but Congress is threatening to clamp down on them.

Now we hear all this concern over participation. Forgive me for being skeptical.

If we really want to increase turnout, we can tell voters more about the campaign finance debate and how Democrats want to make taxpayers pay for campaigns. That is a recipe for high turnout—angry voters.

In support of this bill, we will hear passionate speeches about the rise of democracy in Eastern Europe. Voices will boom: "Even the Soviet Union had a higher turnout in their Presidential election this summer than we did in 1988."

Mr. President, for the Soviet Union and Eastern Europe democratic elections are a novelty. The United States has been at it a lot longer. Rarely do we have such monumental issues at stake in our elections as new democracies do in theirs.

Supporters of liberalizing voter registration laws often lament our Nation's place in the bottom tier of western democracies in voter turnout. I would like to shed a little light on that argument.

The General Accounting Office studied this issue. The GAO noted that Italy ranks first in voter turnout, 94 percent; followed by Austria, 89 percent; and Belgium, 89 percent. The United States ranks 20th, 53 percent; followed by Switzerland in 21st place, 39 percent.

Mr. President, GAO observed that:

> The imposition of relatively small fines or other penalties can have a major impact on voter turnout. Austria, Belgium, and Venezuela impose fines or other penalties for failure to vote.
>
> In Italy, the nonvoter may have his name posted outside the town hall, and his identification papers may be stamped: "Did Not Vote for Five Years." It is widely assumed that Italian nonvoters are subject to discrimination in employment and other benefits. Not surprisingly, Italy has the highest voter turnout among the industrialized democracies, even though it ranks very low in political satisfaction and other attitudinal variables that facilitate voting.
>
> The average voter turnout is about 10 percent higher in countries with penalties for not voting. The causal relationship between penalties and voting is fairly well established. For example, when two nations changed their laws on penalties for failure to vote, their turnout changed accordingly. In 1960, Costa Rica introduced penalties for failure to vote, and voter turnout subsequently increased by 15 percent. In 1971, the Netherlands eliminated all penalties for not voting, and participation then fell by 16 percent.

In Australia and New Zealand, failure to vote is a misdemeanor.

Of interest to those who blame our campaign finance system and voter disgust for low turnout, GAO observed in its study that:

A popular explanation of our low and still declining voter turnout is that, unlike citizens of other democracies, Americans have become alienated from the political process. This argument assumes that Americans increasingly believe that politicians cannot be trusted and that the government is unresponsive ineffectual, or even corrupt. Sometimes the alienation is attributed to historical events that have occurred since the mid-1960's, such as the Vietnam War and the Watergate scandal.

While this is a plausible explanation, it is not supported by cross-national research on voting-related attitudes. Interest in politics, attention to political affairs in the media, and individual political efficacy are consistently higher in the United States than in the European democracies. Moreover, U.S. citizens are more likely than citizens of European democracies to engage in political activity such as working with others in their communities to solve problems, attending political meetings or rallies, and working in behalf of a party or candidate.

While only 34 percent of Americans trust their government to do the right thing all or most of the time—compared to 76 percent of the Swiss and 55 percent of Austrians—higher levels of trust in government do not seem to be associated with higher voter turnout. For example, only 14 percent of the Italians trust their government, but they have the highest voter turnout among the industrialized democracies.

I do not see much to emulate in the turnout rates of other democracies. Those with the highest turnout coerce their citizens to vote. In the United States, people have the right not to vote.

Mr. President, declining voter turnout and registration procedure are issues meriting discussion and analysis. They do not require an expensive Federal mandate in the form of the bill before us.

Now let us check under the hood of the motor-voter bill and see how it works. The motor-voter bill would require State and local governments to register voters in three ways:

First, by simultaneous applications when applying for motor vehicle drivers' licenses;

Second, by applications received through the mail; and

Third, by applications through public assistance, unemployment, and vocational rehabilitation offices.

Clearly, this bill is going to cost States a lot of money to fuel it. Alas, Congress is about out of gas, so S. 250 would send the bill to the States. Cost estimates vary from $20 million to $200 million. Suffice to say it will be a lot of money. Shucks, the States will not mind. Or will they?

Most States have been struggling to devise budgets for fiscal year 1992. It is estimated that their combined deficit will be between $30 and $50 billion. Last year's combined deficit was $8 billion. In fiscal year 1992, California alone faces a $14 billion deficit. New York struggles with a $6 billion deficit. Texas is faced with a $4.5 billion deficit. Connecticut is in such bad shape that the Governor closed all nonessential government services. New Jersey is so destitute it's considering selling off part of I-95. My own State of Kentucky raised income taxes over a $1 billion last year.

Even the Governor of Oregon, who testified this spring in support of the bill, conceded that her State could not afford motor-voter and that is why a bill they passed is contingent on the Federal Government passing one.

Anita Tatum, the director of the voter registration for the State of Alabama, testified at length before the Rules Committee on the expense this bill would portend for her State. She also explained why this Federal mandate is not appropriate for Alabama. While some States have chosen to adopt similar systems, as Ms. Tatum noted: "Washington, DC, is not like Alabama. LA County is not like Alabama. Cook County in Chicago is not like Alabama." Officials in those other areas of the country no doubt would concur. Unfortunately, her views were not greeted with enthusiasm by the proponents of this bill.

Proponents of this bill say the cost is worth it because it will register more voters. It may register more people to vote. However, it does not follow that motor-voters will participate by driving to the polls and voting.

The Committee for the American Electorate studied this issue and at the outset made two notable observations:

First, even at the apex of post-universal suffrage participation in 1960 when 62.8 percent of the eligible electorate voted, the United States had a rate of voter participation lower than most advanced democracies.

Second, despite structural and demographic trends which would normally produce greater participation—general trend towards liberalized registration and voting laws; a more educated populace; declining national mobility and a general aging of the population—voter turnout continues to decline.

Low turnout is not a new phenomenon. The study notes that there are a number of reasons for the comparatively low turnout in this country as opposed to European nations: First, homogeneous rather than heterogeneous parties; second, parliamentary rather than Presidential democracies; third, fewer elections; and fourth, less complex systems of government and stronger parties, to name but a few.

The study goes on to say in regard to registration that:

Declining voter participation cannot be attributed to problems in registration and voting law, since it has occurred during a time when registration and voting law generally has been altered to make registration and voting easier.

One of the reasons the study cites for declining turnout is declining political parties. As I noted previously, the campaign finance bill the Senate passed 2 months ago would further weaken the parties.

The study suggests that S. 250 is misdirected:

The nature and scope of the nonvoting problem in America is such that creating the will to participate is by far the larger enterprise, since the number and percentage of Americans who voluntarily eschew the ballot box is by far greater than those who are blocked by legal, procedural, or administrative impediments.

Among the study's findings:

It has been argued by many academic experts in the field of voting behavior that registration is the primary obstacle to voter turnout—that once a person is registered there is a nearly 90 percent likelihood that he or she will vote. That conclusion is not supported by this study (nor by other studies which have been conducted by the Committee).

In this study there was a positive correlation between increments in registration and increments in turnout in some elections (although never at or near the level of 90 percent) and no such positive correlation in other elections, clearly indicating that political factors rather than registration are more determinative of turnout.

In addition, the study found that when the existing registration pool was expanded, the likelihood of those additional registrants voting decreased.

The bill before us is supposed to increase voter turnout. There is no concrete evidence that it will do so; in fact, there is ample indication that it will not. The very premise of this bill—that it will increase participation—is seriously in doubt.

Mr. President, I have a number of concerns over this legislation including efficacy; expense; and election fraud. The latter is of tremendous concern to me.

Kentucky, my home State, has many traditions. Among the more infamous is our history of election fraud. It is a persistent problem and one which certainly is not confined to Kentucky. That is one very important reason so many States do not want the Federal Government to mandate voter registration procedures.

Perhaps the most disturbing aspect of the motor-voter bill is its potential to foster election fraud and thus debase the entire political process in this country. Several provisions of this bill have caused alarm among State and Federal officials who are charged with ensuring the integrity of our electoral process. That is why the motor-voter bill is acquiring a new nickname: auto-fraud.

We have a duty to protect the integrity of the electoral process for all Americans. While making registration and voting virtually effortless may boost turnout, it surely would undermine the integrity of the process.

One of the most dangerous provisions is the escape clause for States that cannot afford to or would rather not comply. States that have election day registration would not be subject to the provisions of the bill. This is a very dangerous proposition, one that has been largely overlooked in this debate. The cost to States of complying with

S. 250 make any escape clause attractive.

The Justice Department has said that the escape clause—election day registration—"* * * would greatly impair the ability of the Department and the States to combat voting and election fraud * * * [and] would totally preclude meaningful verification of voter eligibility, and thus allow easy corruption of the election process by the unscrupulous."

The Department delineated the dangers of this provision in a letter to the chairman of the Rules Committee in April:

Of all the registration reforms which Congress has considered over recent years, from a law enforcement perspective this idea is by far the most troubling. Our objections to election-day registration rest on the following considerations:

(1) Registering voters at the polls on election day totally eliminates the ability of election registrars to confirm a voter's identity, place of residence, citizenship status, felon status, and other material factors bearing on entitlement to the franchise.

(2) Requiring voters who wish to register on election day to provide some form of identification before being permitted to vote does not respond to the fraud problem. Most commonly used identification documents can be easily faked. Thus, a single false identification can be used by the same voter to cast ballots under assumed names at numerous polling locations.

(3) Merging into one simultaneous act both the registration process and the voting process dramatically increases the risk of voter-bribery, since corrupt political operatives interested in targeting prospective voters for payments will no longer be confined to the preexisting names on registration lists. This problem is exacerbated by the fact, as we have observed in prosecuting and supervising hundreds of vote-buying cases, that individuals who accept payment for their votes do not have a strong interest in candidates and issues, nor do they tend to see the act of voting as a civic duty. Thus, for a few dollars, they are easily manipulated into giving up their franchise.

(4) The ballots of election-day registrants are liable to be tabulated before an irregularity can be ascertained. There is thus the realistic danger of irreversible damage to the integrity of the election, even in those instances where illegal registration and voting are later discovered.

(5) Although election-day registration may work reasonably well in rural and sparsely populated states, it is extremely doubtful that it would be at all successful in many states with mobile and urbanized populations which have experienced significant levels of local and state governmental corruption.

The FEC's new role in regulating all State voter registration systems is not reassuring and does not alleviate concern over fraud. The Washington Post reported earlier this week that the FCC hasn't even finished auditing candidates from the 1988 Presidential elections. To facilitate all the new employees this bill and the campaign finance bill of 2 months ago would necessitate, we might have to kick the military out of the Pentagon to make room for the FEC army.

Mr. President, other provisions of this bill invite fraud as well. As the Department of Justice has stated:

* * * some of the registration techniques mandated by the bill are fraught with the potential for fraud if adequate verification methods are not used in light of local conditions, and because of the strict limitations on standard means of purging voting lists of stale names, the bill would present a serious potential for increased voting fraud and electoral corruption. Voter registration laws are one of the principal protections against election fraud, and any changes to registration requirements must take into account the potential for increased fraud resulting from the changes.

Those who are concerned about election fraud are highly critical of the mail registration provisions of this bill. The Department of Justice notes that:

Registration by mail is much more susceptible to misuse because a would-be registrant never has to appear in person before a registrar for verification of identity and eligibility. The Department's experience with voting fraud cases to date has not conclusively shown whether registration by mail has a substantial impact on the incidence of voting fraud or not—we simply don't know. Most of the States which already have registration by mail also have in place a variety of procedures for independently confirming the information provided in voter registration applications. These verification procedures, though clearly not perfect, at least help to minimize the opportunities for voting fraud.

By contrast, S. 250 would impose a sweeping requirement to allow mail-in registration while simultaneously limiting significantly the ability of the states to use a variety of techniques to verify the applicant's identity and eligibility. For this reason, S. 250's provision for registration by mail would entail a substantial and perhaps prohibitive risk of enhancing the opportunities for fradulent registration and voting.

Government agency-based registration also presents problems in combating election fraud. Social service and other Government employees are not experienced or trained in election procedures. Furthermore, as the Department wrote to Senator FORD, agency-based registration would:

* * * risk various forms of intimidation of the public. In at least some circumstances, people seeking tax relief, public assistance benefits, building permits, etc, could easily be given the impression that they have to register, or register for a particular party, in order to please the administrator in whose hands the fate of their application rests. The Department's experience demonstrates that public officials sometimes abuse their power to dispense or withhold benefits in order to pressure citizens into voting a particular way or registering for a particular party. S. 250 would increase substantially the opportunities for such intimidation and coercion of the public. While Section 5(a) of the bill would ostensibly require the personnel assisting applicants with the completion of their applications not display any political preference or party allegiance or seek to influence the applicant's political preference or party affiliation, we think it would be overly optimistic to expect that this prohibition will be sufficient to deter influence and intimidation.

Many State officials have expressed concerns over election fraud under this bill. Governor Wilder of Virgina stated in a letter to Senator WARNER, a member of the Rules Committee, that S. 250 would "* * * open the door to fraudulent voting." Even the executive director of the D.C. Board of Elections, which currently has motor-voter, pointed out that S. 250, which registers all driver's license applicants unless they stipulate they do not want to, would open up the possibility of "inadvertently and routinely bringing on underaged drivers, noncitizens, nonresidents, felons, and other persons not qualified to vote."

Not only is this bill financially burdensome on States, and probably useless in increasing turnout, it also may undermine the very integrity of the electoral process. For that reason alone, Members should vote against it.

Mr. President, proponents of this bill say they just want to make it easier to vote. We should ask ourselves: How easy should voting be? Is it too much to ask that people have a passing interest in the political process 10, 20, or 30 days prior to an election? It is no secret that every 4 years in November there is a Presidential election.

If we just want to make voting as easy as possible, then technology may be the answer. Interactive television could be the panacea. Turn to "VOTE-TV", press the remote control button corresponding to the candidate of your choice shown on the screen and do your bit for democracy. Why, you could get back to "Jeopardy" or "Entertainment Tonight" before the commercial break ends.

There are (900) telephone numbers used for a variety of purposes, including fundraising. Perhaps a new number: "(900) VOTE-NOW." Dial for Democracy.

This is what the prerecorded message might sound like:

Good afternoon. You have reached "Dial for Democracy," the voter-friendly service. Please enter your social security number, now (simulate dialing).

Thank you, if you would like to review the ballot for today's election, dial "1" now. If you would like to vote a straight ticket, dial "2" now. If you would like to vote individually in each contest, dial "3" now. For more options, dial "4" now.

Perhaps to further stimulate turnout, voters could automatically be eligible for a national lottery. We could just pay people to vote. That is what they do in parts of Kentucky. In fact, paying people to vote may be less expensive and more effective than this absurd bill before us today.

This is an extreme illustration of making voting easy, but I wanted to make a point. How easy does it have to be? Would we serve our constituents by making it easy at the risk of increased voter fraud, increased taxes, or decreased social services? No.

Mr. President, we would do America a service by defeating this bill.

THE MOTOR-VOTER BILL

Mr. HATFIELD. Mr. President, I am pleased to be on the floor today as an advocate for increased voter registration. I know of no greater pursuit as a Member of this body than increasing access to our democracy and enhancing the opportunities for our citizenry to participate in their government.

My friends, if we don't achieve cloture on the motion to proceed today, or even this year, it will not be a failure. I am confident that we will debate this bill, if not today, then in the future. Because the problem of low voter turnout in our Nation has grown too serious to pass over just because the choices available to us are deemed controversial.

Furthermore, the concept of easing voter registration by linking registration to the driver's license procedure in each State is a simple, and extremely effective, solution. It makes good sense and with the appropriate fraud protections in place, it will provide a much-needed update to our current system. A system which is neither yielding the results nor the opportunities we all expect from it.

As many of my colleagues know, last year I had strong reservations about this legislation, particularly in the provisions protecting our system from voting abuse. I was however, committed to working with my good friend and colleague from Kentucky, Senator FORD, to correct these concerns. The legislation that we jointly bring to the floor today is vastly different from last year's version. I am confident that it adequately addresses concerns regarding voting abuse, and advances a three-tiered registration procedure which will genuinely improve our current voter registration system. It deserves the bipartisan support of our colleagues.

The arguments against S. 250 are in my opinion, lacking in substance. Recently, one high ranking State election official testified in a Rules Committee hearing that the large number of new voters that would be generated by this legislation would exceed the capabilities of their current polling places. Mr. President, it seems that this gentleman has made my point for me. I would be delighted if additional polling places were required to deal with increased voter turnout in the country—is that not a worthy goal? Am I one of the few Members of this body willing to admit that this is a goal worthy of my support?

Yes, this bill may require additional funds targeted to accommodating new voters. But should cost alone be a barrier to voter registration? Then are we telling America that we want increased numbers of voters, but only until our current polling places are full? I cannot accept that Mr. President.

I believe we have a responsibility to increase voter registration and therefore, assist the States in meeting these higher costs. Therefore, we have provided a postal rate reduction in the bill which the CBO predicts could save each State up to $4 million annually. This provision will allow States to mail voter-related material at reduced rates.

This bill also will yield savings in the future from the streamlining of the voter registration process. Currently a large amount of voter registration takes place shortly before each election and election officials are forced to hire part-time employees to deal with the overload. Under S. 250 registration will occur throughout the year and the CBO projects that this will save States $10 million in Presidential elections and $7 million in general elections each election cycle.

Finally, many opponents of this bill cite that it mandates computerization of the voting rolls. S. 250 does not require this additional step. Numerous States already have motor-voter laws successfully implemented without elaborate computer systems.

Mr. President, I must also briefly address the issue of States rights. Like many of my colleagues, my start in public service was at the State level and I am always weary of the Federal Government impeding on States' rights. This bill does address a subject traditionally left to the States. However, it is crafted to provide great flexibility to the States in implementing new registration procedures. It will be more convenient, more accurate, and more cost effective than our current system once it is fully implemented.

The issue of low voter turnout has reached such staggering proportions that we can no longer afford to blame voter apathy as the culprit. In the last congressional elections only 36 percent of the Nation's eligible population participated by casting a vote. Our citizens are discouraged from registering to vote by numerous factors. Our voter registration procedures are complex and imposing. I strongly believe we can make improvements with this legislation and I urge the full support of my colleagues.

Mr. SPECTER. Mr. President, I am opposed to invoking cloture on the pending motion to proceed on S. 250 because, once again, there has not been any discussion at all on this motion.

I have always supported increased voter registration. I am proud that Pennsylvania has recently begun voting registration drives at State unemployment and welfare offices. For too long citizens of our country have been denied the right to vote because of difficulty in registering quickly and effectively. But opponents of this bill have mounted persuasive arguments that portions of this bill—in particular the portion mandating mail-in registration—could potentially lead to instances of fraud. As a district attorney in Philadelphia, I found instances of election fraud to be the gravest threat to our democracy. Any legislation affecting voting registration must be carefully crafted to address this fraud issue.

Over the last few months, I have met with the president of Pennsylvania's League of Women Voters, Diane Edmundson, who argued very forcefully that this legislation is vital. My staff has also met with disabled rights groups and civil rights groups who are supporting legislation. I consider their input very important.

I believe it is inappropriate to invoke cloture, even on a motion to proceed, before there has been any debate at all on that motion.

Mr. SIMPSON. I rise to briefly express my opposition to this procedural vote which would force this body to begin consideration of what I consider to be a very flawed bill. I am referring to S. 250, the motor-voter legislation. I intend to be actively involved in that debate with much more extensive comments.

The primary problem I have with this legislation is that it is based on such a faulty premise. It is a grave error to think that low voter turnout is the result of perceived barriers to voter registration. I am fully convinced that when citizens feel that their votes will have an impact, they will then register and cast their ballots. I believe that the real problem in this country is that the ordinary citizen feels that special interest money and organizations have drowned out his or her vote in the electoral process. This causes voter apathy and results in a decreased desire to register and vote. For that reason, I was proud to be an original cosponsor of the Republican alternative to the campaign finance reform bill. Our bill would ban PAC's, eliminate soft money or sewer money in congressional campaigns, and would further reduce the amount an individual, who resided outside a candidate's State could contribute.

Instead of targeting the root cause of voter apathy, this bill would paternalistically impose the strong arm of the Federal Government into functions, which States such as Wyoming, have historically performed so very well.

This bill calls for motor-voter registration, mail registration, and registration in designated Federal, State, or private locations. Registration services would have to be available in government offices which provide public assistance, unemployment compensation, vocational rehabilitation, fishing and hunting licenses, and in government revenue offices.

My State already has an efficient voter registration procedure that has

allowed us to maintain one of the highest voter turnout percentages in the Nation. Totally overlooked by this legislation are the costs of training all of the additional registrars. Not one Federal dime is authorized for these training costs, and I anticipate significant additional costs will be incurred in order to maintain an on-going training program for new hires, for hiring additional State personnel to supervise compliance with the law, and to increase salaries of the employees who didn't bargain for those additional registration responsibilities.

S. 250 is a bill in the truest sense of the word. The States will have to pick up the tab for this misguided Federal intrusion.

Instead I support and am cosponsor of S. 921, a more rational substitute sponsored by Senator DOLE and Senator STEVENS. S. 921 would enhance State efforts at voter registration without requiring Federal intervention. It would avoid one of the greatest weaknesses of the motor-voter bill, specifically the unfunded costs to the State and local governments. S. 921 would lend a helping hand to States by authorizing a total of $25 million over 3 years in grants as an incentive for States to implement and improve voter registration procedures. Unlike S. 250, implementation of these procedures would be completely voluntary. To be eligible for these grants, States would be required to match any amount of Federal funds dollar for dollar with State funds. S. 921 also beefs up Federal and State abilities to combat election fraud and public corruption. It is the type of bill that we should be considering in the Senate—not this "motor-voter" bill which mandates that States, like Wyoming, which are doing a darn good job in voter registration change their system, by Federal directive, with large unknown cost to State and local governments.

For these reasons I oppose S. 250 and oppose efforts to force the Senate to consider this legislation.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. The hour of 10 o'clock having arrived, by unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

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 the motion to proceed to the consideration of S. 250, a bill to establish national voter registration procedures for Federal elections, and for other purposes:

Wendell Ford, Jeff Bingaman, Daniel K. Akaka, Max Baucus, Timothy E. Wirth, J.R. Biden, Jr., George Mitchell, Richard Bryan, Bob Kerrey, J. Lieberman, Pat Leahy, Brock Adams, Daniel K. Inouye, Bill Bradley, John F. Kerry, Frank R. Lautenberg.

CALL OF THE ROLL

The ACTING PRESIDENT pro tempore. By unanimous consent, the quorum call has been waived.

VOTE

The ACTING PRESIDENT pro tempore. The question is, Is it the sense of the Senate that debate on the motion to proceed to the consideration of S. 250, the National Motor-Voter Registration Act, shall be brought to a close? The yeas and nays are required. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Illinois [Mr. DIXON] is necessary absent.

I also announce that the Senator from Arkansas [Mr. PRYOR], is absent because of illness.

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

The yeas and nays resulted—yeas 57, nays 41, as follows:

[Rollcall Vote No. 134 Leg.]

YEAS—57

Adams	Exon	Lieberman
Akaka	Ford	Metzenbaum
Baucus	Fowler	Mikulski
Bentsen	Glenn	Mitchell
Biden	Gore	Moynihan
Bingaman	Graham	Nunn
Boren	Harkin	Pell
Bradley	Hatfield	Reid
Breaux	Heflin	Riegle
Bryan	Hollings	Robb
Bumpers	Inouye	Rockefeller
Burdick	Johnston	Sanford
Byrd	Kennedy	Sarbanes
Conrad	Kerrey	Sasser
Cranston	Kerry	Shelby
Daschle	Kohl	Simon
DeConcini	Lautenberg	Wellstone
Dodd	Leahy	Wirth
Durenberger	Levin	Wofford

NAYS—41

Bond	Gramm	Packwood
Brown	Grassley	Pressler
Burns	Hatch	Roth
Chafee	Helms	Rudman
Coats	Jeffords	Seymour
Cochran	Kassebaum	Simpson
Cohen	Kasten	Smith
Craig	Lott	Specter
D'Amato	Lugar	Stevens
Danforth	Mack	Symms
Dole	McCain	Thurmond
Domenici	McConnell	Wallop
Garn	Murkowski	Warner
Gorton	Nickles	

NOT VOTING—2

Dixon	Pryor

The PRESIDING OFFICER. On this vote, the yeas are 57 and the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, parliamentiary inquiry. What is the Senate's business?

TREASURY, POSTAL SERVICE, EXECUTIVE OFFICE OF THE PRESIDENT, AND INDEPENDENT AGENCIES APPROPRIATIONS, FISCAL YEAR 1992

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 2622, the Treasury-Postal Service appropriations bill, which the clerk will report at this time.

The assistant legislative clerk read as follow:

A bill (H.R. 2622) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 20, 1992, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Helms/Thurmond Amendment No. 734 (to committee amendment beginning on page 59 line 7), to make it a Federal crime for a doctor, dentist or other health care professional who has AIDs and knows it to preform invasive medical procedures without informing the patient.

Mr. DOMENICI. Mr. President, this unanimous-consent request has been cleared on both sides. I ask unanimous consent that the pending amendments be laid aside, and that it be in order for Senator HELMS to offer his amendment regarding child pornography, notwithstanding the provisions of the previous order.

The PRESIDING OFFICER. Is there objection?

Hearing none, it is so ordered.

Mr. DOMENICI. I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, the unanimous consent with reference to the four amendments we are to consider today provides that the Helms amendment on AIDS was supposed to be first amendment; is that correct?

The PRESIDING OFFICER. The Chair does not have knowledge of the

subject matter of the Senator's amendment. But under the previous order, the Chair's understanding is that the Helms second-degree amendment to the pending committee amendment was the order.

That has now been laid aside under the unanimous-consent request of the Senator from New Mexico to allow the Senator to offer his child pornography amendment.

Mr. HELMS. What I propose to do, is proceed with the amendment on child pornography.

The PRESIDING OFFICER. The unanimous-consent request just adopted, the Chair informs the Senator, allows the Senator from North Carolina to offer his child pornography amendment at this time.

AMENDMENT NO. 780

(Purpose: To ensure that criminals convicted of child pornography offenses serve time in prison)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself and Mr. THURMOND, proposes an amendment numbered 780.

Mr. HELMS. 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, add the following new section:

SEC. .

(1) Pursuant to its authority under section 994 of title 28, United States Code, the Sentencing Commission shall promulgate guidelines, or amend existing or proposed guidelines as follows:

(a) guideline 2G2.2 to provide a base offense level of not less than 15 and to provide at least a 5 level increase for offenders who have engaged in a pattern of activity involving the sexual abuse or exploitation of a minor.

(b) guideline 2G2.4 to provide that such guideline shall apply only to offense conduct that involves the simple possession of materials proscribed by chapter 110 of title 18, United States Code and guideline 2G2.2 to provide that such guideline shall apply to offense conduct that involves receipt or trafficking (including, but not limited to transportation, distribution, or shipping);

(c) guideline 2G2.4 to provide a base offense level of not less than 13, and to provide at least a 2 level increase for possessing 10 or more books, magazine, periodicals, films, video tapes or other items containing a visual depiction involving the sexual exploitation of a minor;

(d) section 2G3.1 to provide a base offense level of not less than 10;

(2)(a) Notwithstanding any other provision of law, the Sentencing Commission shall promulgate the amendments mandated in subsection (1) by November 1, 1991, or within 30 days after enactment, whichever is later. The amendments to the guidelines promulgated under subsection (1) shall take effect November 1, 1991, or 30 days after enactment, and shall supercede any amendment to the contrary contained in the amendments to the sentencing guidelines submitted to the Congress by the Sentencing Commission on or about May 1, 1991.

(b) The provisions of section 944(x) of title 28, United States Code, shall not apply to the promulgation or amendment of guidelines under this section.

Mr. HELMS. Mr. President, may I ask who is controlling the time for the opposition, if there is any?

The PRESIDING OFFICER. The Chair advises the Senator from North Carolina that, under the order, the majority manager should be controlling the time.

Mr. HELMS. Maybe that is a good omen, Mr. President. Maybe there is no opposition to the amendment, and I would be surprised if any Senator does oppose this important amendment.

Mr. President, this amendment increases the sentences for smut peddlers convicted of transportation, receipt, or possession of child pornography. The Sentencing Commission recently, for some unbeknown reason, decided to reduce the sentences for these smut peddlers so low that most of these convicted smut peddlers and pedophiles will receive, at most, probation.

As I said last week, what goes on in this country? This was not the intent of Congress when it passed child pornography bills in 1988 and 1990.

So, in effect Mr. President, the Sentencing Commission has undermined Congress' attempt to assure severe punishment for dealing in child pornography. I want to turn that around. I want to say to the Sentencing Commission, "You made a mistake; now you correct it." The Helms-Thurmond amendment ensures that criminals will receive serious punishment for child pornography offenses, not a mere slap on the wrist.

The amendment instructs the Sentencing Commission to increase the penalty for child porn offenses so that offenders will serve at least some time in jail.

Mr. President, this amendment has the support of groups all across this country. For example, the National Coalition Against Pornography, the National Women's Leadership Task Force, the Religious Alliance Against Pornography, the Children's Legal Foundation, Morality in Media, and others.

I can already hear from some quarters, like the ACLU, "What is the big deal with pornography? It does not hurt anybody."

I have news for them. It hurt our defenseless young children. I am standing on this Senate floor precisely because pornography, and especially child pornography, causes enormous damage. It destroys young lives and eats away at the very moral foundation of this country.

Let me illustrate. In 1986, the Senate Subcommittee on Investigations found that child pornography was directly connected to child molestation. The experts testified that users of child pornography are frequently pedophiles.

A Los Angeles police detective testified that he estimated that among the 700 child molesters he himself had helped arrest, more than half had child pornography in their possession at the time.

Furthermore, child molesters testified that they used child pornography to persuade children to engage in sex acts or to pose for pictures. And the Senate report concluded that:

Child pornography plays a central role in child molestations by pedophiles, serving to justify their conduct and assist them in seducing their victims.

We are talking about mere babies.

There have been dozens of studies by respected experts who come to the same conclusion—child pornography is indeed a cause of child molestations.

Mr. President, I ask unanimous consent that a compilation of the research on child pornography, along with the 1986 Senate report, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HELMS. I thank the Chair.

The question is, Why would the Sentencing Commission lower the penalty for child pornography? It baffles me. To be honest, I am not sure why they did it, but let me tell you what happened.

The 1990 crime bill created a new offense for possession of child pornography. There is an existing offense for receipt, transportation, or trafficking in child porn, which had a base level of 13. So what did the commission do? It decided to put receipt down with possession and give it a base level of 10, which means that criminals can get off with a sentence of just probation.

The President, the receipt offense should not be classified with the possession offense. Prosecutors usually obtain convictions for receipt of child porn based on reverse-strings. And experts say it is very difficult to prove trafficking and therefore they use the receipt offense more often. Furthermore, a person who purchases and receives child porn is actively supporting the child porn industry.

The Department of Justice concurs that receipt should not be classified with trafficking. The Department sent me a letter stating:

The Department strongly believes that receipt of child pornography should be grouped with trafficking violations and not with the new possession offense. Reducing sanctions for receiving child pornography would send the wrong message to those who may consider violating the law.

Second, Mr. President, a base level of 10 is just too low, because the defendant usually gets probation or home

confinement—no prison time. The current guideline is already too lenient. So what does the Sentencing Commission do? Instead of increasing the sentencing guideline, they reduce it.

I sincerely believe that we must increase the sentencing levels for child porn if we want to stop child molestations and put a dent in the child porn trade.

So my amendment increases the level for possession from the proposed 10 to 13, and it increases the level for receipt from 13 to 15. This ensures that these criminals will do some minimum time in prison and reflects the intent of Congress expressed in the 1990 and 1988 crime bills.

Mr. President, the Helms-Thurmond amendment provides real punishment for child porn crimes, instead of slaps on the wrist. For the sake of our children, I urge Senators to support the amendment.

I ask unanimous consent that copies of letters from the Department of Justice and several groups be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

EXHIBIT 1

RESEARCH ON PORNOGRAPHY: THE EVIDENCE OF HARM

(From the National Coalition Against Pornography)

CHILD PORNOGRAPHY

The Problem

The National Coalition for Children's Justice (Ken Wooden)

Between 1981 and 1985, child sexual abuse (including having pictures taken pornographically) rose by 175%.

The National Obscenity Enforcement Unit (Testimony before the Senate Judiciary Committee, June, 1988)

"Review of recent law enforcement statistics and studies, as well as scientific research, reveals the devastating effect obscenity and child pornography are having on our nation.

Ann Burgess, Professor at the University of Pennsylvania (Federal grant to study child pornography)

Pornography depicting children is used by child molesters to convince children that deviant sex acts (which all child sex abuse is) are normal—thereby breaking down their resistance. Her later study (1987) found that victims of child sexual abuse have symptoms of chronic or delayed posttraumatic stress. It causes multiple psychological problems which may take years to resolve.

Pierce (1984)

Sexually exploited children involved in the pornography industry are usually recruited among runaways, although some may use neighborhood children or their own children.

The Nature and the Extent of the Problem

Report of the U.S. Congress Permanent Subcommittee on Investigations on Child Pornography and Pedophilia (1986)

"No single characteristic of pedophilia is more pervasive than the obsession with child pornography. The fascination of pedophiles with child pornography and child abuse has been documented in many studies and has been established by hundreds of sexually explicit materials involving children.

"Detective William Dworin of the Los Angeles Police Department estimates that of the 700 child molesters in whose arrest he has participated during the last ten years, more than half had child pornography in their possession. About 80% owned either child or adult pornography.

"Each convicted child molester interviewed by the Subcommittee either collected or produced child pornogrphy, or both. Most said they had used the material to lower the inhibitions of children or to coach them into posing for photographs.

"It is not unusual for pedophiles to possess collections containing several thousand photographs, slides, films, videotapes and magazines depicting nude children and children engaged in a variety of sexual activities.

"'The maintenance and growth of [the pedophile's] collections [of items related to children] becomes one of the most important things in their life. Child pornography exists primarily for the consumption of pedophiles—adults whose sexual preference and attraction is to prepubescent children. If there were no pedophiles, there would be little child pornography other than that involving adolescent children.' (Special Agent Kenneth Lanning, FBI)"

"Based on the information obtained during its investigation, the Subcommittee has reached the following general conclusions:

Child pornography plays a central role in child molestations by pedophiles, serving to justify their conduct, assist them in seducing their victims, and provide a means to blackmail the children they have molested in order to prevent exposure.

The vast majority of child pornography in the United States constitutes a small portion of the overall pornography market and is deeply underground. Unlike the adult pornography industry, it is not significantly influenced by organized crime.

It is extremely difficult, if not impossible in some cities, to purchase true child pornography at adult bookstores. The overwhelming majority of child pornography seized in arrests made in the U.S. has not been produced or distributed for profit.

The seizure by the U.S. Customs Service of imported child pornography, especially from Denmark and the Netherlands, has declined dramatically since late 1984 due to increased diplomatic and law enforcement pressure, American news media reports and increased caution shown by American child pornography customers.

The membership of known pedophile-support groups in the United States is probably less than 2,000. While many of the groups' members have been convicted for child sex crimes, the groups themselves are not involved actively in large-scale criminal conspiracies, such as commercial child pornography rings.

The Child Protection Act of 1984, which made illegal all distribution of sexually explicit material involving children, has been highly successful, leading to a substantial increase in federal prosecutions and the placing of higher priorities on such investigations. Since passage of the law two years ago, the Department of Justice has won 164 convictions on child pornography violations; in the previous six and one-half years, there were only 64.

While the awareness of many police agencies about child sexual exploitation has improved greatly, many still do not have the training, staff or inclination to recognize promptly and investigate potential leads to crimes involving child pornography or child sexual abuse."

Southern California Child Exploitation Task Force

It is "dangerously inaccurate" to presume that "because there is not widespread *commercial* distribution of child pornography in the U.S.," that therefore "significant law-enforcement effort in the area of child exploitation is not warranted. The threat imposed on our children has little to do with [that] aspect of the child pornography business."

Burgess (1984) (A study in Jefferson County, Kentucky)

"37 percent of the prostitute group admitted to having been involved in pornography; only 18 percent of the non prostitute group reported involvement in pornography. 38 percent of the runaways were involved in prostitution, and 15 percent of the runaways were involved in pornography.

"Identifying and tracking missing children is vital to curbing the victimization of children. Over 86 percent of Jefferson County children involved in child prostitution and pornography were, at the time of those activities, runaways or missing.

John Rabun, Exploited and Missing Children Unit, Louisville, Kentucky

"The Police/Social work team of the Exploited and Missing Child Unit (EMCU) of Louisville, KY investigated 1,400 cases of children suspected of being victims of sexual exploitation. Over 40 major cases involved the successful prosecution of adults involved with over 12 children each. One case involved 320 children. At the time of the arrest and/or service of search warrants, all 40 of these adult predators were found with various forms of adult pornography, and in most cases child nudes and/or child pornography were also found.

The National Obscenity Enforcement Unit

"It has been most successful in its efforts. Prosecutions for child pornography are up by 80% in the last fiscal year (1987) and obscenity prosecutions are up by 800%."

David Duncan (1988) Southern Illinois University

He did a content analysis of twenty-five years of homosexual pornographic magazines sold in adult bookstores of two major US cities. Dr. Duncan found the frequency with which clearly underage models appeared in such legally available magazines has declined to zero, due to the recent legislation prohibiting child pornography. Suggestions of child pornography remained, however, in the frequent use in porno magazine titles of such words as 'boy,' 'young' and 'teen' although the models were no longer adolescents. Youthful appearing models achieved star billing in what the Attorney General's Commission on Pornography has named 'pseudo-child pornography.'

"The final decline (of child pornography) in the late seventies may have been in response to the pressures building against child pornography which led eventually to that legislation. To a large extent it probably reflects the impact of child abuse programs emerging in the seventies, since most of the child models appearing in such pornography are likely to be incest victims being exploited by their parents or other adults."

But the fact that there is a demand for such material is clearly indicated by the continued presence of the new pseudo-child pornography.

Pseudo-Child Pornography

Judith Reisman (1987)

"A content analysis of Playboy, Penthouse, and Hustler magazines, December 1953 to December 1984, yielded 6,004 child images. Newsstand available child imagery in the content of erotica/pornography increased nearly 2,600% from 1954–1984. 80% of the children were actively involved in all scenes; and each magazine portrayed children as unharmed and/or benefited by adult-child sex."

David A. Scott (In Pornography; A Human Tragedy, 1987)

"Judith Reisman (1985) found that from the first issue of Playboy in 1954, children in cartoons (or photographs of adults dressed to suggest children) have appeared in sexual contact with adults, and the frequency and intensity of these contacts has increased through the years. The dominant impression was that child/adult sex is glamorous, thereby enhancing the impression that these activities are harmless. Magazines can escape the letter of child pornography laws while still implying that sex with children is desirable and readily available. And these magazines, of course, are sold in the open."

Don Feder (Boston Herald, 10/27/88)

"The October issue of Playboy contains a five-page rebuttal to the so-called Reisman report. Odd that a publication with a circulation of 3.5 million would devote so much space to answering what it assures us is preposterous stuff. Some experts believe [pseudo-child pornography] encourages sexual abuse, both by exciting perverted passions and fostering the belief that the child actually is an eager participant in the act."

"Pornographers protest their innocence, while facilitating the victimization of our children."

Does Pornography Promote Abuse?

The National Obscenity Enforcement Unit

They now teach their investigators at all of their seminars "to look for pornography at the scene of sexual crimes involving children."

"It is beyond debate that molestation of children is, in part, caused by consumption of pornography."

John Rabun, Exploited and Missing Children Unit

"Over 4 years, the EMCU team learned to expect to always find adult pornography since it was used for the offender's own arousal; self-validation of their own sex deviations; extortion of child victims or other adults; and deliberate and planned lowering of inhibitions of child victims."

The Badgley Report (1984)

The report found that almost 60% of both male and female juvenile prostitutes had been asked to be the subject of sexually explicit films or photographs; 12% of the girls and 20% of the boys had actually been used in making pornography: juvenile prostitutes are a high-risk group in regard to being exploited by pornographers.

Two smaller American studies emphatically confirm this finding (Burgess: 75 percent of youth hustlers had participated in pornography; John Rabun: 37 percent had participated).

The 1982 URSA Study: concluded that there exists a "slight" relationship between juvenile prostitution and pornography. There, 27 percent of the young male prostitutes had been photographed by a "john"; of the 54 young male hustlers for whom information was available, 9 had been photographed for commercial pornographic magazines. In the face of that evidence it seems impossible to deny the existence of a significant link between the exploitation of minors in prostitution and in pornography.

Extant studies of juvenile prostitutes showed less incidence of participation in pornography than is the real case because by its very nature one item of pornography can be viewed contemporaneously by many patrons and for repeated sittings. The demand for pornographic performers will always be a tiny fraction of the demand for prostitutes.

Surgeon General's Workshop on Pornography (June 24, 1986)

19 nationally and internationally recognized clinicians and researchers achieved consensus on the statement that "children and adolescents who participate in the production of pornography experience adverse enduring effects."

Southern California Child Exploitation Task Force (1988)

It is the longest existing task force in the U.S. and has prosecuted all the child pornography and Federal child abuse cases in the Central District of California during the past 10 years.

"According to the U.S. Customs Service, a conservative estimate of the number of pedophiles in the U.S. is 15,000. It is impossible to determine accurately the number, because pedophiles do everything possible to avoid detection."

"We have frequently gone into homes with search warrants for child pornography and discovered children living in the home who have been molested by the person who is the target of our child-pornography investigation."

"We have discovered photographs of the pedophiles molesting children."

"We have found convicted child molesters as well as individuals who were providing children to molesters."

"One of the men we prosecuted had 50,000 photographs of noncommercial child pornography in a storage locker. He admitted molesting several hundred children following his release from a state hospital for a child molestation conviction. He even maintained a ledger listing those molestations. He taught swimming and tennis to youngsters, some of whom became his victims."

"A convicted child molester who was the subject of one of our investigations was found, after he had ordered materials, to have homemade child pornography in his house—including a video tape depicting him molesting a child who was clearly under the influence of drugs or alcohol."

Some articles written in pornographic magazines call attention to a few cases in which individuals (who claimed neither to be sexually active with children nor to possess child pornogrphy) were the subjects of search warrants after they ordered child pornography from undercover Government agents. While Government operations occasionally identify individuals who are not suitable for prosecution, those cases are the exception, not the rule.

M. DOUGLAS REED, PH.D.,
Vice President, National Leadership, National Coalition Against Pornography.

SENATE REPORT 99–537 ON CHILD PORNOGRAPHY AND PEDOPHILIA, OCTOBER 9, 1986

I. INTRODUCTION

A decade ago, the sexual abuse of children was a subject that came to the attention of most Americans infrequently, if at all. Assault cases often were quietly kept out of the courts, and many police departments viewed such cases as little more than time-consuming social work. Child molesters were more often the target of jokes than investigations. For millions of Americans, child sexual abuse was a problem that was out of sight and out of mind.

During the late 1970s, however, reports of child sexual abuse slowly began to increase, and so did public awareness of the problem. The American Association for Protecting Children, a subsidiary of the American Humane Association, noted a ten-fold increase in the number of children reported to be sexual abuse victims from 1976 to 1983,[1] but it was not until the following year that the problem was presented to the general public as a "crisis." Beginning in 1984 and throughout 1985, child sexual abuse was almost constantly in the national focus. Networks and local TV stations devoted scores of prime-time hours to its exposure; hundreds of newspapers and magazines ran lengthy accounts of child sexual assaults and pornography rings; grocery bags and milk cartons began to carry the faces of missing children; citizen awareness groups sprang up around the country; police agencies that once paid scant attention to the problem began establishing special training programs for their officers and setting up child sex crime units; the National Center for Missing and Exploited Children was established in Washington, D.C.; in Congress, from 1983 to mid-1986 a total of 194 bills and 13 hearings focused specifically on some aspect of child abuse or child sexual exploition.[2]

With this unprecedented attention came an exponential increase in the reporting of child sexual abuse, believed by some to be the most underreported major crime in America.

Reports increased dramatically throughout the United States—in Farm Belt states and in the nation's largest cities, in West Coast beach towns and East Coast industrial centers, in the neighborhoods of the affluent, the middle class and the poor. "A 1985 report by the New York-based Child Welfare League of America said child sexual abuse reports rose 59 percent from 1983 to 1984.[3] In Delaware and Idaho reports nearly doubled from 1983 to 1984; in Oregon they rose 129 percent; and in Wisconsin, they went up by 132 percent.[4] In Houston, police received 1,600 reports of child sexual assaults in 1985, more than double the total in 1983.[5] In virtually all cases the extraordinary rise in sexual abuse statistics reflected a state's or city's increased efforts to discover and investigate such crimes, rather than a sudden increase in molested children over years past. And yet there is wide agreement that even these are conservative figures."[6]

The following are just a few of the many cases that attracted national attention during 1984 and 1985:

In Manhattan Beach, California, in the Spring of 1984, seven employees of a day care center were charged with 207 counts of rape, sodomy and other abuses, involving at least 41 children over a six-year period. Doctors confirmed that 37 of the children showed physical signs of molestation. After a grueling pre-trial hearing lasting several months, many parents withdrew their children as witnesses after watching other children undergo lengthy cross-examination by defense attorneys. Later the Los Angeles County District Attorney dropped all charges against five of the seven defendants, citing a lack of evidence.[7]

In 1985 a Roman Catholic priest was convicted of molesting over a period of years at

---

Footnotes at end of article.

least 37 boys, among them altar boys and members of the parish Boy Scout troop in Henry, Louisiana. Depositions in the case disclosed that the priest's supervisors had confronted him with such allegations as far back as 1974 and had received similar complaints from parents in 1977. Yet the supervisors did not alert police and still allowed the priest to work with children. More than a dozen civil suits were filed against the diocese by the families and $4.2 million in damages already has been awarded.[8]

In Tampa, Florida, Eric Cross, who had been convicted of molesting young girls in four countries, was indicted for allegedly distributing child pornography while in prison on a molestation charge. He was convicted on 19 counts of distributing child pornography and other charges and sentenced to a 95-year prison term.[9]

As a large number of cases illustrate, child molesters come from virtually every type of background in society. In the past two years those convicted on such charges have included police officers, politicians, judges, physicians, lawyers, journalists, grandmothers, teachers and military officers, among others. To their neighbors and coworkers they were often respected, responsible members of the community, remembered by some acquaintances as being "great with kids." Many were active in church, school and sports organizations. The stereotype of the child molester as a menacing deviate lurking in public places obviously does not apply to many of them.

With these events as a backdrop, the Senate Permanent Subcommittee on Investigations in early 1984 began an investigation of child pornography and pedophilia—the abnormal sexual desire of an adult for pre-pubescent children. Subcommittee investigators interviewed more than 200 people in more than 30 states, including convicted child molesters, pornographers, pro-pedophilia activists, molestation victims, investigators, judges, prosecutors, psychiatrists and child protection workers. The Subcommittee also reviewed thousands of documents, including arrest reports, victim statements, pedophile correspondence, newsletters, child pornography catalogs, films, videotapes and magazines. Finally, the Subcommittee held three days of public hearings—on Nov. 29 and 30, 1984 and Feb. 21, 1985—for further exploration of the issues and questions raised during the investigation.[10]

The investigation's primary focus was on child pornography and pedophile activities in the United States, but because of the importance of The Netherlands, Denmark and Sweden in the international distribution of child pornography, the Subcommittee also examined efforts to combat child pornography in those countries.[11]

The Subcommittee found that while the growth in the number of reports of abuse and sexual exploitation of children is cause for continuing concern, recent Federal laws—notably the Child Protection Act of 1984—are beginning to show significant results in the battle against these evils. The public perception of an "epidemic" of child abuse and child pornography reports and arrests, which has led to demands for even tougher laws, may actually be testimony to the effectiveness of the existing laws in providing authorities with the tools to arrest and convict child abusers and pornographers. In addition, the economic impact of the child pornography industry often tends to be overstated. The most significant impact to society from this practice cannot be measured in economic terms; instead, it must be measured in terms of the extent of physical and psychic damage to innocent children brought about by the production and use of child pornography.

II. ORGANIZED CRIME

Because of the Subcommittee's historic interest in the activities of organized crime, an effort was made to obtain any information that might show a direct link between organized crime and the distribution of child pornography in the United States. The Subcommittee interviewed former child pornography distributors, federal informants, pedophiles, prosecutors and law enforcement officials from the United States, Canada and Europe. No one produced definitive evidence that traditional organized crime groups, such as La Cosa Nostra, have any appreciable influence on the production or distribution of true pedophile-oriented child pornography. Nor was evidence found of any widespread involvement, much less control, of child pornography distribution by other ethnic crime organizations or criminal groups, such as motorcycle gangs.

There is evidence that La Cosa Nostra crime families are involved in the production and distribution of commercial adult pornography.[12] A small portion of this market may include underaged models, usually 16 or 17, and some material appears to show legal-aged models who are dressed and made up to look like minors. While any sexually explicit material involving persons of this age is usually harmful, if not illegal, for purposes of this report child pornography refers to material involving children under 13.

After extensive inquiries, the Subcommittee has concluded that the distribution of child pornography in the United States is largely carried out by individual pedophiles, who produce this material and trade it among themselves or order it through the mail from other countries. In the few instances when police have uncovered commercial child pornography operations, they paled in comparison to the sophistication and profits of adult pornography distributors, and were not controlled by traditional organized crime. One such organization was run by Cathy Wilson, who at the time of her arrest in California in 1983 was believed to control about 80 percent of the commercial child pornography trade in the United States.[13] Wilson told Subcommittee investigators in August 1984 that "the Mafia" had not been involved in her operation or that of any other child pornographer with whom she dealt during the 1970s and early 1980s.[14] Richard Trolio, once a business partner of Wilson's who later became a federal informant against her, told the Subcommittee he agreed with Wilson's assessment.[15]

Economics probably plays a major part in organized crime's lack of interest in child pornography. The adult sex industry (magazines, videotapes, X-rated movie theaters, nightclubs, massage parlors, "dial-a-porn" and "escort" services, etc.) operates legally in much of the country and grosses several billion dollars annually.[16] Conversely, the commercial child pornography industry has declined substantially in recent years.[17]

Perhaps equally discouraging to organized crime is the aggressive enforcement of the 1984 federal child pornography statutes,[18] which carry 10-year prison terms for production, importation or distribution of the material. In comparison, violations involving adult pornography are often treated as misdemeanor obscenity cases, when they are prosecuted at all.

III. PROSECUTIONS BY THE DEPARTMENT OF JUSTICE

On February 6, 1978, Congress enacted Public Law 95-225, the Protection of Children Against Sexual Exploitation Act of 1977. This legislation added sections 2251 through 2253 to Title 18 of the United States Code to deal specifically for the first time with the problem of child pornography. Efforts by prosecutors to obtain convictions under these statutes, however, were hampered by a provision in the law that the pornographic material in question had to be produced or distributed for "commercial" purposes in order to warrant prosecution. Since most child pornographers in the United States tend to trade child pornography among themselves rather than sell it, the Department of Justice was forced to rely primarily upon sections 1461-1465, Title 18 of the U.S. Code, the federal obscenity statutes, to prosecute child pornographers.

Congress moved to close this loophole on May 21, 1984, by amending the child pornography statutes to delete the "commerciality" requirement and a requirement that the disseminated material be legally obscene.[19] The amendments, which also added civil and criminal forfeiture provisions to the statutes, now appear as sections 2251-2255, Title 18, U.S. Code. The effect of these amendments on the Department of Justice's ability to prosecute child pornography cases has been dramatic: from 1978 to April 1984, the Department obtained 64 convictions; between May 1984, and June 1986, at least 164 convictions were obtained.[20]

	Indictments	Convictions
Year:		
1978	13	13
1979	1	1
1980	11	10
1981	14	15
1982	19	7
1983	6	15
1984 (per-Act)	5	3
1984 (post-Act)	55	35
1985	123	102
1986 (May)	24	27

IV. PEDOPHILIA

The terms pedophile and pedophilia have been so widely used in the news media in recent years that their clinical definitions sometimes are overlooked. Many references to "pedophiles" seem to indicate the term is applied to any adult who is sexually attracted to a legal minor. That is not the case, and the distinction is worth noting.

Pedophilia, literally "love of a child," as used in this report refers to the condition in which an adult's primary sexual attraction is to prepubescent children—roughly between six and twelve years of age.[21] While many cases exist in which true pedophiles have been involved with children below and above those age boundaries, the vast majority fall between them. (A less-commonly used term, hebephilia, describes an adult's sexual attraction to adolescents. This more accurately defines the offenders involved in teenage prostitution, for example, than does the often-misused label, pedophile.) Pedophiles normally have little interest in adolescents who are beginning to reach sexual maturity; it is, in fact, the very lack of sexual development, the childish innocence, that arouses most true pedophiles. The term pedophile is often misused when applied to all child sex crime offenders. Experts agree that many children are assaulted simply because they are available and, of course, more easily overpowered than an adult. The true pedophile, as a rule, does not commit violent acts against his victim.

Pedophiles often are attracted to children within a specific age range—boys from 8 to 10, girls under 9, etc.—and there is some evidence to show this preference may develop because it was the same age at which the molester was also first molested as a child.[22] Many studies have shown a large percentage of convicted child molesters were themselves molested as children.[23]

While pedophiles come from virtually all social, racial, ethnic and age groups, therapists and investigators have been able to arrive at some common characteristics many of them seem to share. Pedophiles normally are divided into two categories—regressed and fixated. An authoritative psychiatric profile described them in this way:[24]

"The [fixated] often has never developed emotionally or intellectually. He feels comfortable around children and uncomfortable around adults. He sees the child as an adequate sexual partner who will enjoy the experience. He shows no guilt of shame afterwards. This offender will be passive, dependent, immature, lonely, inadequate, with low self-esteem. He knows right from wrong and will be law abiding apart from child molestation. He will have dated little and rarely be married. His immaturity will mean that his work, social and personal adjustment will be poor. He will often be employed in menial jobs and prefer to work around children. He seeks children out as companions and in his jobs, so he may be found working with children in his job or as a recreation.

"The [regressed offender] is reasonably well adjusted. He will have no criminal record (apart from child molestation) and will have a good job, social and personal adjustment. He will have dated and typically be married. However, under stress, especially threats to his masculinity, he regresses to immature behavior. So if he is fired, or criticized at work, or if his wife has an affair or criticizes him, he may begin to drink alcohol and impulsively choose a non-threatening female sexual partner (a child). After the experience, he will realize what he has done and feel guilt and shame. He deals with this guilt by attributing his behavior to alcohol."

V. MEETING AND SEDUCING CHILDREN

"I used all the normal techniques used by pedophiles. I bribed my victims, I pleaded with them, but I also showed them affection and attention they thought they were not getting anywhere else. Almost without exception every child I molested was lonely and longing for attention".—Joseph Henry[25]

A determined pedophile quickly masters the art of meeting and engaging the trust of children. Pedophiles are constantly seeking out new ways of drawing children into their confidence without raising suspicions.

Those who seek frequent contact with children, and either have no criminal record or believe it would not be discovered, may find employment as day care center workers, recreation directors, video arcade managers, Little League coaches, scout leaders, Big Brothers, schoolteachers or in a host of other occupations where children are present. In a study of 40 pedophile cases by FBI Special Agent Kenneth Lanning and Dr. Ann Burgess, almost half of the offenders used their occupations to encounter children.[26]

Other pedophiles have located children through babysitting, neighborhood contacts and volunteer organizations. Many have met their eventual victims through adult relationships with parents, as friends, co-workers, counselors, etc.

A number of cases have involved people in positions of authority—people to whom even careful parents often entrust their children, such as priests, teachers and police officers. These cases are cited not to undermine faith in these professions, but to emphasize that a pedophile's all-consuming desire for children will often outweigh his position of trust in the community.

Some pedophiles expose themselves to children or attempt to lure them into their cars or homes with presents, promises and deception, but these cases represent a small minority of the molestation incidents investigated by police officials in the United States. Fortunately, the stereotype of the child molester as a dirty, leering stranger on a park bench is disappearing as awareness of the true nature of pedophilia grows.

The words of a pedophile provide the best description of the thought process involved in attempting to meet and seduce children. Following is an anonymously-written excerpt from How To Have Sex With Kids, a booklet published by David Sonenschein, an Austin, Texas, author who has written extensively about pedophilia:

"The important thing about meeting kids is that it happens best when you meet in places or in doing things that interest both of you. Like in video game arcades, kids can tell if you're just in their cruising for sex, or are there because you like playing the games. The same with sports and sporting events. You can meet kids anywhere you go that you're interested in going, and what's important about this is you've got a right to be where you are. Like your own neighborhood. We have a right to walk around, talk to people there, and get to know who's who. . . .

"It's also a good idea to get to know parents. Sometimes you can get babysitting tasks or you can just take the kids places when they know you and know that the kids like being with you. Sometimes parents can introduce you to other kids too."[27]

Once the pedophile has gained private access to the child, he then must convince the child to cooperate. According to Nicholas Groth, a psychiatrist who has worked with many pedophiles in the Connecticut prison system, "The most commonly used technique of luring the child into . . . sexual activity is by capitalizing on the child's need for attention, approval, and human contact."[28]

Convicted child molester Joseph Henry, who molested 22 girls aged six to fourteen over a period of nearly 30 years, testified before the Subcommittee about the techniques he used to manipulate children:

". . . I would take my victims to movies and to amusement parks. When I babysat them, I would let them stay up past their bedtime if they let me fondle them. One little 8-year-old girl I was babysitting came over to my house one day soaking wet from a rainstorm. I told her I'd pay her $1 if she would stay undressed for an hour. This incident opened the door for three years of molestation."[29]"

VI. USE OF CHILD PORNOGRAPHY

No single characteristic of pedophilia is more pervasive than the obsession with child pornography. The fascination of pedophiles with child pornography and child erotica has been documented in many studies and has been established by hundreds of arrests of pedophiles who are found to possess a large amount of sexually explicit material involving children.

Detective William Dworin of the Los Angeles Police Department estimates that of the 700 child molesters in whose arrest he has participated during the last ten years, more than half had child pornography in their possession. About 80 percent owned either child or adult pornography.[30]

Each convicted child molester interviewed by the Subcommittee either collected or produced child pornography, or both. Most said they had used the material to lower the inhibitions of children or to coach them into posing for photographs.

It is not unusual for pedophiles to possess collections containing several thousand photographs, slides, films, videotapes and magazines depicting nude children and children engaged in a variety of sexual activities—alone, with other children, with adults, and even with animals. In some child pornography, the children depicted are infants and toddlers, some as young as 18 months.[31] Rainer Hernandez, a California college student who testified before the Subcommittee about his experience as a molestation victim, reported that when Los Angeles Police officers searched the home of his uncle, who has molested Mr. Hernandez for four years when he was a teenager, they found thousands of sexually explicit photos of children.[32] In many other cases police have discovered extensive collections carefully indexed, often on home computers, by age of the children, origin of the material and type of sexual activities performed. A man in Austin, Texas analyzed an entire collection of child pornography magazines by the emotions shown on the children's faces—boredom, pleasure, pain, etc.[33]

In testimony before the U.S. Senate Subcommittee on Juvenile Justice on August 8, 1984, Special Agent Kenneth Lanning of the FBI's Behavioral Science Unit, a recognized expert on pedophilia, elaborated on the pedophile's fascination with child pornography:

"They (pedophiles) typically collect books, magazines, articles, newspapers, photographs, negatives, slides, movies, albums, drawings, audio tapes, videotapes, personal letters, diaries, sexual aids, souvenirs, toys, games, lists, paintings, ledgers, etc., all relating to children in either a sexual, scientific or social way. Not all pedophiles collect all these items. Their collections vary in size and scope. However, the maintenance and growth of their collections becomes one of the most important things in their life. . . . They may hide their collections, move them, or even give them to another pedophile, but they almost never destroy them."[34]

Experts cite seven primary reasons that pedophiles collect child pornography:

1. *Justification.*—A pedophile needs to know or to convince himself that his obsession is not "abnormal" and dirty, but is shared by thousands of other intelligent, sensitive people. The collection and trading of child pornography, along with scientific and academic articles justifying pedophilia, accomplishes this goal. Pornography also provides pedophiles with a common currency, a mutually desired possession which can be bought, sold and traded in order to develop trust and camaraderie with fellow pedophiles.[35]

The pedophile's collection includes lists of names, addresses and phone numbers of other pedophiles, and correspondence received from such persons. These lists are guarded like gold, often kept in safe deposit boxes or secretly hidden in the pedophile's residence. They not only provide contacts for the pedophile, but they further reinforce the belief that because so many others engage in the same activity, it must not be as "wrong" as society believes. This constant need for validation and support from other

pedophiles, however, often overcomes the instinct for caution. Enticed by fantasy letters about child sex or promises of exchanging child pornography, many pedophiles have been trapped by police through the simple exchange of letters.

2. Arousal.—In the same way others use adult pornography, pedophiles use child pornography to stimulate their sexual drive and to aid in masturbation. While some pedophiles may only fantasize about the material, Lanning suggests that "the arousal and fantasy fueled by the pornography is only a prelude to actual sexual activity with children."[36]

3. To lower a child's inhibitions.—Many pedophiles firmly believe children enjoy sex with adults and that pictures of this activity will convince reluctant children to more freely participate. "Peer pressure has a tremendous effect on children," Lanning testified. "If other children are involved, maybe it is all right, the child things. In the pornography used to lower inhibitions, the child portrayed will appear to be having a good time."[37]

In two cases examined extensively by Subcommittee investigators, convicted molesters Joseph Henry and Donald Woodward acknowledged that they showed their victims child pornography in an effort to lower their inhibitions and even to suggest specific sex acts. In letters written by Woodward to other pedophiles, he explained specifically what he had in mind for the child pornography he was sending or receiving:

"I've just mailed you, in a separate envelope, a bunch of material on (the two children he was convicted of molesting). I need this material back before 7/23 for use as "bait" in a plan I'll tell you all about if it comes off. Maybe bait is the wrong word; they (the photos) are intended to be emulated by prospective participants . . .[38]

". . . The photos of [his 10-year-old victim], of course, are to be samples of poses that I want them [other children] in, from mild and sweet, to hot and lewd . . ."[39]

Woodward and his friends also found that a Polaroid camera came in handy during photo sessions with children. "I may just pick up a Polaroid . . . since kids always enjoy seeing how they look in pictures right away," Woodward wrote to another pedophile, "and I think it helps persuade them to go 'just a little farther' in the next shot . . ."[40]

4. Preservation of the child's youth.—Another principal reason for the collection of child pornography by pedophiles is to insure there will always be an image of the child at the age of sexual preference. "No matter how attractive any one child sexual partner is," Lanning testified, "there can be no long-term sexual relationship. All child victims will grow up and become sexually unattractive to the pedophile. However, in a photograph, a 9-year-old boy stays young forever."[41] Nor are the photographs always sexually explicit. Many pedophiles avidly collect photos of clothed children. Pederasts, or "boy-lovers" as they call themselves, quite often collect photos of young boys in sports outfits. William Thorne, a detective in the Bergen County, New Jersey, prosecutor's office, testified before the Subcommittee that in the arrest of James Cooper on molestation charges, officers found several hundred 35mm photographs of teenage boys at parks, swimming pools, ice rinks, video arcades, baseball games, even newspaper boys on their routes—all clothed, but usually wearing shorts (see pp. 20, 21).[42] Other pedophiles have collected department store catalog photos of young children in underwear.

5. Blackmail.—A child molester is consumed with the prospect of being caught. When he has taken sexually explicit photos of his victims, he not only has preserved the object of his desire for posterity, but he also has created an effective tool for keeping the child from revealing his abuse. If a child should threaten to tell his parents or authorities, the molester will remind him of the photos and tell him he will be punished or lose the affection of parents and siblings if the photos are revealed.[43]

6. A medium of exchange.—Agent Lanning testified that some pedophiles exchange photographs in order to gain access to other children. The quality and theme of the material (boy-boy, boy-girl, adult-child, etc.) determines its value. Because of this system of exchange, copying machines, slide enlargers and photo duplicating equipment are often used to produce duplicate copies of material which can be offered to other pedophiles.[44]

[1] American Humane Association/American Association for Protecting Children, *Highlights of Official Child Neglect and Abuse Reporting;* Denver, CO, 1984, p. 17.

[2] Report to Subcommittee by Congressional Research Service, Washington, June 1986.

[3] Child Welfare League of America, *Too Young to Run: The Status of Child Abuse in America;* New York, February 1985, p. 5.

[4] *Ibid.*, p. 10.

[5] Subcommittee staff interview with Sgt. William D. Brown, Vice Division, Houston, TX, Police Department, February 1986.

[6] National Committee for the Prevention of Child Abuse, "The Size of the Child Abuse Problem"; Chicago, February 1985, p. 2; Sally Squires, "Who Would Sexually Abuse a Child?"; *The Washington Post* "Health" Magazine, June 19, 1986, p. 7.

[7] Ted Rohrlich and Lois Timnick, "McMartin Flaw: Gaps in Evidence"; *The Los Angeles Times*, Jan. 27, 1986, p. 4.

[8] Jon Northeimer, "Sex Charges Against Priest Embroil Louisiana Parents"; *The New York Times*, June 20, 1985, p. A-24.

[9] John Dorschner, "The Child Seducer"; *The Miami Herald* "Tropic" Magazine, Oct. 9, 1983, pp. 14-21; Subcommittee staff interview with Special Agent Barry Carmody, Federal Bureau of Investigation, Tampa, FL, March 1986. (Also see pp. 39-41.)

[10] Permanent Subcommittee on Investigations, United States Senate, *Child Pornography and Pedophilia;* S. Hrg. 98-1277, Part 1, Nov. 29-30, 1984; S. Hrg. 99-18, Part 2, Feb. 21, 1985 (*Hearings*).

[11] The U.S. Customs Service estimated in 1985 that 85 percent of the child pornography seized as it was entering the United States came from Denmark and the Netherlands; see pp. 29-34.

[12] California Department of Justice, *Organized Crime in California, 1982-83;* Sacramento, 1984, pp. 14-15.

[13] "Case Synopsis," Administrative Vice Division, Los Angeles Police Department, May 7, 1982 (copy retained in Subcommittee files).

[14] Subcommittee staff interview, August 1984.

[15] Subcommittee staff interview, August 1984.

[16] Gregory Stricharchuk, "'Porn King' Expands His Empire With Aid of Businessman's Skills"; *The Wall Street Journal*, May 8, 1985, p. 1.

[17] U.S. Customs Service seizure reports, February 1986; Subcommittee staff interview with Cathy Wilson, *op. cit.;* Subcommittee staff interview with Joyce Karlin, Assistant U.S. Attorney, Los Angeles, August, 1984.

[18] See following section.

[19] Child Protection Act of 1984, P.L. 98-292.

[20] Report to Subcommittee by Criminal Division, U.S. Department of Justice, June 1986.

[21] Kenneth V. Lanning, *Child Molesters: A Behavioral Analysis;* National Center for Missing and Exploited Children, Washington, February 1986, pp. 1-2.

[22] Sharon Araji and David Finkelhor, "Abusers: A Review of the Research," in Finkelhor, *A Source Book on Child Sexual Abuse* (Beverly Hills: Sage, 1986), p. 103.

[23] Lanning, *op. cit.*, p. 11.

[24] Op. cit.

[25] *Hearings*, Part 2, p. 8.

[26] Kenneth V. Lanning and Ann Wolbert Burgess, "Child Pornography and Sex Rings," *FBI Law Enforcement Bulletin*, Washington, January 1984, p. 11.

[27] David Sonenschien, ed., *How to Have Sex With Kids;* Austin, TX, 1983, pp. 6-7 (copy retained in Subcommittee files).

[28] A. Nicholas Groth with H. Jean Birnbaum, *Men Who Rape: The Psychology of the Offender* (New York: Plenum, 1979), p. 142.

[29] *Hearings*, Part 2, p. 8.

[30] Subcommittee staff interview, September 1985.

[31] *Hearings*, Part 1, p. 33.

[32] *Hearings*, Part 2, p. 18.

[33] Austin, TX Police Department, evidence seized in search of the home of David Sonenschein, August 1984.

[34] Subcommittee on Juvenile Justice, United States Senate, *Effect of Pornography on Women and Children*, S. Hrg. 98-1267, Aug. 8, 1984, p. 38.

[35] *Ibid.*, pp. 40-41.

[36] *Ibid.*, p. 43.

[37] *Ibid.*

[38] Donald Woodward, personal correspondence seized as evidence by Los Angeles Police Department.

[39] *Ibid.*

[40] *Ibid.*

[41] Subcommittee on Juvenile Justice, *op. cit.*, p. 42.

[42] *Hearings*, Part 1, p. 54.

[43] Subcommittee on Juvenile Justice, *op. cit.*, pp. 43-44. Also see *Hearings*, Part 2, p. 18.

[44] Subcommittee on Juvenile Justice, *op. cit.*, p. 44.

EXHIBIT 2

MORALITY IN MEDIA, INC.,
New York, NY, June 19, 1991.

Hon. JESSE HELMS,
U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR HELMS: Morality in Media was greatly distressed to learn of new sentencing guidelines which will result in reduced sentences for those convicted of violating the Federal Laws pertaining to child pornography.

Child pornography is among the most heinous of crimes, and if anything, the penalties should be made stricter, not weaker. We are therefore strongly in favor of legislation which will "put teeth" back into the sentencing guidelines for those who violate the child pornography laws.

The best and only way to close the distribution network for child pornography is to severely punish those who create, distribute, procure and possess this vile material.

Sincerely,

JOSEPH J. REILLY, Jr.,
President.

RELIGIOUS ALLIANCE
AGAINST PORNOGRAPHY,
Cincinnati, OH, June 24, 1991.

Hon. JESSE HELMS,
U.S. Senator,
Washington, DC.

DEAR SENATOR HELMS: We are writing you on behalf of the National Coalition Against Pornography, Religious Alliance Against Pornography (RAAP) and the National Women's Leadership Task Force (NWLTF) to express our strong support for your introducing legislation that would strengthen the sentencing requirements for child pornography offenses.

Our concern that new legislation be introduced stems from the proposed guidelines that will take effect on November 1, 1991 unless both houses of Congress take affirmative action before that date. We were profoundly disappointed to discover that the proposed guidelines recommended reduced sentencing levels for transporting, receiving and possessing child pornography.

The reduction in sentencing requirements will have a devastating effect on law enforcement efforts in this area. We have made progress over these last few years because federal law enforcement authorities have been able to convict child molesters on child pornography charges. Those men could then

count on spending some substantial time in jail. Sadly, every picture of child pornography displays a child molestation taking place.

With the new guidelines, receipt or possession of child pornography is only a base level 10 offense. For a defendant receiving child pornography (who accepts responsibility), the recommended sentence has dropped from 8–14 months to 2–4 months, with probation now being a distinct possibility! Having worked on behalf of thousands of victims of this material, it is our strong belief that the sentencing requirements for these offenses need to be strengthened significantly, rather than lessened.

It also seems inconceivable that these proposed guidelines reflect the seriousness with which we know you and the Congress view this heinous offense. It would be tragic if the guidelines proposed for last session's child pornography legislation (which was meant to strengthen the offense) were to result in a decrease in child victimization prosecutions.

We believe the pending Crime Bill offers an appropriate and opportune time to make some vital adjustments consistent with the seriousness of the crime.

Each of our united networks is a mainstream alliance of concerned leaders and citizens. The Religious Alliance Against Pornography membership includes the top leaders of nearly 50 denominations, faith groups and interfaith organizations, serving over 100 million citizens. The National Women's Leadership Task Force was formed with the same objective as RAAP: reducing sexual victimization by eliminating illegal and child pornography. We would be strongly supportive of any action taken in this area.

We look forward to the opportunity to continue working with you and your staff on making this vital correction in the immediate future. Thank you for your continued leadership and concern. We are deeply grateful.

Sincerely yours,

DR. JERRY R. KIRK,
Chairman, Religious Alliance Against Pornography; President, National Coalition Against Pornography.

DEEN KAPLAN,
Vice President, Public Policy.

RELIGIOUS ALLIANCE AGAINST PORNOGRAPHY

As religious leaders, we believe in the inherent dignity of each human being. Created in God's image and likeness, the human person is the clearest reflection of God's presence among us. Because human life is sacred, we all have a duty to develop the kind of societal environment that protects and fosters its development. This is why we address a broad range of life threatening and life diminishing issues. These assaults on human life and dignity are all distinct, each requiring its own moral analysis and solution. But they must be confronted as elements of a larger picture.

The purpose of RAAP is to bring into clear fucus a major factor in the asault on human dignity and the consequent dehumanization that it promotes: hardcore and child pornography. This concern brought us together following the release of the Report of the Attorney General's Commission on Pornography. We are in unanimous agreement that hard-core and child pornography, which are not protected by the Constitution, are evils which must be eliminated.

As religious leaders, our primary responsibility is to teach and to motivate. We can and must help people understand the moral dimensions of the problem of hard-core and child pornography and what their responsibility is in this regard, while fully respecting freedom of expression guaranteed by the First Amendment. In particular, we wish to make it clear that we do not and will not advocate 'censorship'. Our understanding of censorship implies actions being taken against materials which are protected by the First Amendment.

As teachers, we will do all in our power to proclaim the truth of human dignity and freedom, and to promote the God-given human values neded for the moral health of our society. Given the information and motivation, people will do what is necessary to affect public policy.

The membership of RAAP, representing a broad spectrum of America's religious community, is an indication of the seriousness of the problem and our commitment to addressing it. This represents the beginning of an ongoing process which will facilitate greater cooperation on this vital issue among religious bodies.

MEMBERSHIP

Cooperative

Mrs. Jacqueline G. Wexler, President, National Conference of Christians and Jews.

Greek Orthodox

His Eminence Archbishop Iakovos, Primate, Archdiocese of North and South America.

Bishop Philip of Daphnousia, Archdiocese of North and South America.

Reverend Milton B. Efthimiou, Archdiocese of North and South America

Jewish

Rabbi March Tanenbaum.

Rabbi Mordecai Waxman.

Rabbi Walter S. Worzburger.

Protestant

Rev. James E. Andrews, Stated Clerk, Presbyterian Church (USA).

Bishop George W. Bashore, Bishop of Western Pennsylvania, United Methodist Church.

Dr. Harold C. Bennett, President & Treasurer, Executive Committee, Southern Baptist Convention.

Mrs. Sarah Blanken, Vice President, Women's Leadership, National Coalition Against Pornography.

Dr. Ralph A. Bohlmann, President, The Lutheran Church-Missouri Synod.

Bishop Voy M. Bullen, General Overseer, The Church of God.

Dr. G. Raymond Carlson, General Superintendent, Assemblies of God.

Rev. Clifford R. Christensen, Conference Minister, Conservative Congregational, Christian Conference.

Dr. Raymond E. Crowley, General Overseer, Church of God (Cleveland, TN).

Rev. L. Edward Davis, Stated Clerk, Evangelical Presbyterian Church.

Dr. James Dobson, President, Focus on the Family.

Bishop Paul A. Duffey, Secretary, Council of Bishops, United Methodist Church.

Dr. Steve F. Flatt, Minister, Madison Church of Christ.

Bishop William Frey, The Episcopal Church.

Dr. Archie R. Goldie, Secretary, N. Amer. Baptist Fellowship, Baptist World Alliance.

Dr. Ray H. Hughes, First Assistant/General Overseer, Church of God (Cleveland, TN).

Dr. B. Edgar Johnson, General Secretary, Church of the Nazarene.

Dr. William A. Jones, President, National Conference of Black Pastors.

Rev. Dean M. Kelley, Director of Religious & Civil Liberties, National Council of Churches.

Dr. Jerry R. Kirk, President, National Coalition Against Pornography.

Dr. Richard Land, Executive Director, Christian Life Commission, Southern Baptist Convention.

Mr. James M. Lapp, Executive Secretary, General Board, The Mennonite Church.

Dr. Eileen W. Lindner, Associate General Secretary, National Council of Churches.

Chief John Maracle, Chief of North American Native Christian Council.

Bishop George Dallas McKinney, Bishop of Southern California, Church of God in Christ.

Dr. Thomas A. McDill, President, Evangelical Free Church of America.

Dr. Billy Melvin, Executive Director, National Association of Evangelicals.

Commissioner Andrew S. Miller, The Salvation Army, Retired.

Dr. Edwin G. Mulder, General Secretary, Reformed Church in America.

Mr. David H. Northup, Executive Vice President, Advent Christian General Conference.

Commissioner James Osborne, National Commander, The Salvation Army.

Mr. Matt Parker, President, Institute for Black Family Development.

Mr. Vern Preheim, General Secretary, The General Conference Mennonite Church.

Dr. Adrian Rogers, Former President, Southern Baptist Convention.

Dr. Oscar Romo, Director, Div. of Language Missions, Southern Baptist Convention.

Dr. Mary O. Ross, President, Women's Conv. Auxiliary, National Baptist Convention, U.S.A., Inc.

Rev. Don Sauls, General Superintendent, Penecostal Free Will Baptist Church.

Dr. R. Donald Shafer, General Secretary, Brethren in Christ Church.

Rev. Ray E. Smith, General Superintendent, Open Bible Standard Churches, Inc.

Dr. Glen O. Spence, Executive Director, General Association of General Baptists.

Dr. Everett Stenhouse, Assistant General Superintendent, Assemblies of God.

Dr. Mary Ruthstone, Secretary, Women's Commission, National Association of Evangelicals.

Dr. Paul Tanner, Executive Secretary, Retired, Church of God (Anderson, IN)

Bishop Clyde E. Van Valin, Free Methodist Church of North America.

Rev. Vilis Varsbergs, President, Latvian Evangelical Lutheran Church in America.

Dr. Daniel E. Weiss, General Secretary, American Baptist Churches, U.S.A.

Dr. John H. White, President, National Association of Evangelicals.

Dr. Melvin L. Worthington, Executive Secretary, National Association of Free Will Baptists.

Rev. Donald E. Wrigley, President, Advent Christian General Conference.

Roman Catholic

His Eminence Joseph Cardinal Bernardin, Archibishop of Chicago.

His Eminence John Cardinal Krol, Archbishop of Philadelphia, Retired.

His Eminence Bernard Cardinal Law, Archbishop of Boston.

His Eminence John Cardinal O'Connor, Archbishop of New York.

Most Rev. Roger Mahony, Archbishop of Los Angeles.

Most Rev. James W. Malone, Former President, National Conference of Catholic Bishops.

Most Rev. Daniel E. Pilarczyk, President, National Conference of Catholic Bishops.

Bishop Robert J. Banks, Auxiliary Bishop of Boston.

Bishop Francis, J. Mugavero, D.D., Bishop of Brooklyn and Queens.

The Church of Jesus Christ of Latter Day Saints

Elder John K. Carmack, First Quorum of the Seventy.

Dr. Richard P. Lindsay, Second Quorum of the Seventy.

Mr. Bruce Olsen, Managing Director, Public Affairs.

NATIONAL WOMEN'S LEADERSHIP TASK FORCE

The National Women's Leadership Task Force, in partnership with the National Coalition Against Pornography and the Religious Alliance Against Pornography, mobilizes and equips women to eliminate child pornography and to remove illegal pornography from the open market.

SUPPORTIVE CONCEPTS

We are women of faith who have prayerfully come together to commit ourselves to the preservation and enhancement of human dignity.

We are women united in commitment to the task of eradicating child pornography and illegal pornography from our nation and our world.

We are concerned citizens who serve as business executives, church leaders, community leaders, educators, and government officials living in a society where illegal pornography degrades and dehumanizes women, destroys children, and corrupts men, those caught up in addiction and those exploited.

We are women focused on the goals of protecting ourselves, our families, our neighborhoods, and our communities by raising awareness that child pornography and other illegal pornography promotes sexual violence and victimization of children, women, men and families; developing regional and community task forces across America called WIN groups; and working with the Religious Alliance Against Pornography and National Coalition Against Pornography to influence local, state and federal governments. We encourage networking and/or joining with other decency organizations wherever feasible.

We are women who care and will encourage other women of diverse religious persuasions and philosophical motivations to join us in the challenge of freeing our nation from sexual abuse and degrading sexual attitudes.

MEMBERSHIP

Mrs. Sarah Blanken, Chairperson, Vice President, Women's Leadership, Natl. Coalition Against Pornography, Cincinnati, OH.

Mrs. Jan Augenstein-Miller, Development Officer, Miami University, Camden, OH.

Mrs. Susan A. Baker, Parents' Music Resource Center, Arlington, VA.

Mrs. Mariam Bell, Deputy Assistant Secretary for Public Affairs, Dept. of Health & Human Services, Washington, DC.

Mrs. Susan Bell, Board Member, Citizen's For Community Values, Cincinnati, OH.

Mrs. Ulyses Brinkley, Housing Program Specialist, Burke, VA.

Dr. Jane Nady Burnley, Director, Office for Victims of Crime, U.S. Department of Justice, Washington, DC.

Mrs. Sandra Clopine, Secretary, Women's Ministry Dept., Assemblies of God, Springfield, MO.

Sister Joy Clough, Director, Office of Public Information, Archdiocese of Chicago, Chicago, IL.

Ambassador Holland Coors, Washington, DC.

Mrs. Martha Davis, Women's Crisis Center, Covington, KY.

Mrs. Shirley Dobson, Focus on the Family, Pomona, CA.

Mrs. Becky Dunlop, Management Consultant, Arlington, VA.

Mrs. Tish Fainelli, Businesswoman, Video Biz, Longwood, FL.

Mrs. Rebekah Gibson, Businesswoman, Los Angeles, CA.

Mrs. Sandy Grear, Communications Management Consultant, Chicago, IL.

Mrs. Olive Hodson, Vice President, Women's Ministers International, Free Methodist Church, Lebanon, OR.

Mrs. Colonel Barbara Hood, Assistant to National President For Women's Organizations, Salvation Army, Verona, NJ.

Mrs. Laura Hudson, Executive Director, Citizens for Advocating Decency & Revival of Ethics, Lexington, SC.

Mrs. Susan Hunt, Consultant, Women in the Church, Presbyterian Church of America, Atlanta, GA.

Mrs. Joanne Jankowski, Lawyer, Maple Grove, MN.

Mrs. Dee Jepsen, Chairman of the Board, Regent University, Fairfax, VA.

Mrs. Ardeth Kapp, International President, Young Women of the Church of Jesus Christ of Latter-day Saints, Salt Lake City, UT.

Mrs. Patty Kirk, Natl. Coalition Against Ponography, Cincinnati, OH.

Dr. Eileen Lindner, Associate General Secretary, National Council of Churches, New York, NY.

Miss Patricia McEntee, Public Relations, Morality in Media, New York, NY.

Mrs. Beverly Medved, President, Natl. Council of Catholic Women, Kalispell, MT.

Mrs. Monique Nelson, California Care Coalition, Irvine, CA.

Mrs. Dellanna O'Brien, Executive Director, Women's Missionary Union, Southern Baptist Convention, Birmingham, AL.

Ms. Peggy Owens, Staff Associate, Washington Office, Presbyterian Church USA, Washington, DC.

Dr. Georgiana Rodiger, Clinical Psychologist, Altadena, CA.

Dr. Mary O. Ross, President, Women's Convention Auxiliary, National Baptist Convention, Detroit, MI.

Mrs. Cleo Seremetis, Representative of the Greek Orthodox Archdiocese of N. & S. America, Church and the Ladies National Philopthocos Society, Cincinnati, OH.

Dr. Mary Ruth Stone, Secretary, Women's Commission, National Association of Evangelicals, Cleveland, TN.

Rev. Leslie Taylor, Associate Director for Advocacy, United Church of Christ, Cleveland, OH.

CHILDREN'S LEGAL FOUNDATION,
Phoenix, AZ, June 20, 1991.

Hon. JESSE HELMS,
U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: As you well know, Children's Legal Foundation, funded in 1957, is dedicated to ridding the Nation of illegal child pornography and obscenity.

Child abuse and sexual assaults on children are occurring in epidemic numbers in the United States today. The Attorney General's Commission on Pornography in 1986 found that the primary vehicle for the production and distribution of child pornography involved trade in materials created by child abusers and distributed informally to other child abusers. If we, as a Nation, are to ever slow down this ever escalating exploitation of children, then we must treat the marketing—distributing, receipt, and possession—of child pornography as the serious crime that it is.

For the above reasons, and many more that are too numerous to list in this short letter, Children's Legal Foundation strongly endorses the legislation you are proposing which would strengthen the child pornography penalties as reflected in the Federal Sentencing Guidelines.

I know I speak not only for my organization, but also the more than 100,000 members of CLF when I thank you for your leadership in this area.

Sincerely,

JAMES P. MUELLER,
General Counsel.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, June 26, 1991.

Hon. JESSE HELMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HELMS: This letter is in response to your request for the views of the Department of Justice on your proposed amendment relating to various sentencing guidelines for child pornography offenses. My comments are directed to section (1)(b), of your amendment which would modify the Sentencing Commission's proposed changes to the penalties for the receipt of child pornography (sections 2G2.2 and 2G2.4 of the guidelines).

Your proposed legislation is consistent with the position the Department recently advocated to the Sentencing Commission. The Department strongly believes that receipt of child pornography should be grouped with trafficking violations and not with the new possession offense. Reducing sanctions for receiving child pornography would send the wrong message to those who may consider violating the law.

Therefore, the Department supports your effort to reinstate previously established penalties for receiving child pornography which has travelled in interstate or foreign commerce, or through the mail.

The Office of Management and Budget has advised that there is no objection to the submission of this position from the standpoint of the Administration's program.

Sincerely,

W. LEE RAWLS,
Assistant Attorney General.

GAMMON & GRANGE,
Washington, DC, June 26, 1991.

Hon. JESSE HELMS,
U.S. Senator, Washington, DC.

DEAR SENATOR HELMS: I am writing you to express the strongest possible support for your introducing legislation that would strengthen the sentencing requirements for child pornography offenses. I have spent the last 9 years combatting child exploitation and child pornography, as the Chief Assistant U.S. Attorney in North Carolina, then as the first Executive Director of the U.S. Department of Justice Child Exploitation and Obscenity Section during the Reagan Administration, and now as the President of the National Law Center for Children and Families.

Corrective legislation is essential if we are to prevent hundreds of pedophiles from receiving token sentences which put them back on the streets to victimize children.

The clinical and law enforcement evidence in this area is overwhelming. Child pornography is produced, distributed, and consumed almost exclusively by pedophiles (adults expressing a sexual preference for children) or molesters. In hundreds of cases we have found it used to reduce the child's resistance to molestation, to blackmail the child against describing to authorities what has

happened, to teach the child exactly what the molester wants done, and finally, as a form of stimulation for the molester. There is no such thing as a minor child pornography offense. The possession of one child pornography picture has directly contributed to the molestation of at least one young child.

The vast majority of these offenders are men. Their clandestine networks have proven extremely difficult for law enforcement agents to penetrate. We have used "reverse-stings" and a number of other innovative approaches to attempt to get beyond the veil of secrecy, to rescue these children. Two examples are particularly illustrative of the role of child pornography prosecutions in helping destroy molester networks.

In Los Angeles, The LAPD Sexually Exploited Child Unit has found pornography used in the commission of extrafamilial sex crimes against children in almost two-thirds of their cases over the past 10 years. In an enormous investigation (involving 40 major cases with 12 or more child victims per offender) by the Louisville Exploited and Missing Children Unit, they found all 40 of the adult predators with various forms of adult pornography. The vast majority also possessed child pornography. One can begin to understand the scope of this problem when you consider that one of the Louisville cases involved 320 children.

Without the strictest sentencing guidelines, pedophile networks will continue to grow and flourish, free from the fear of prison, where molesters can find no children to satisfy their urges. Law enforcement efforts in this area will be emasculated, as few U.S. Attorneys will devote either time or resources to an offense that in all likelihood, will produce probation as the final outcome. The tremendous progress we have made over the past five years through inter-agency cooperation, reverse-stings and new stricter laws, which have closed gaping loopholes, will be significantly eroded if the new sentencing guidelines mandate a level 10 offense for receiving child pornography. It seems almost inconceivable—hundreds of children will pay the price.

In almost every instance where we have investigated a child pornography offense, we have found some evidence of child molestation. I urge you to strengthen the old child pornography guidelines by at least two levels. A reduction in the sentencing requirements will tell the law enforcement community that these offenses are no longer considered serious by our policymakers. The strongest laws on the books are meaningless if an offender who is convicted of such a horrendous crime goes home an hour later.

Lastly, having worked both within the federal government and as an attorney in the private sector to help Congress draft effective laws dealing with child exploitation, I am confident that there is no possibility that these proposed guidelines reflect the seriousness with which the Congress views this life destroying offense. It would be tragic if the guidelines proposed for last session's child pornography legislation (which was meant to significantly strengthen the offense) were to result in a decrease in child victimization prosecutions. I urge you to prevent that from happening.

Sincerely,

H. ROBERT SHOWERS, Esq.,
President, National Law Center for Children and Families, Partner, Gammon & Grange.

Mr. HELMS. Mr. President, I am going to reserve the remainder of my time in case there is some opposition to the amendment, which I do not really anticipate. But I do want a rollcall vote on the amendment so that it will get through to the Sentencing Commission that the Senate has taken note of this.

Mr. President, I ask unanimous consent that, since there is nobody else on the floor, the quorum call I am about to request not be charged to either side.

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

Mr. HELMS. Obviously I, cannot get the yeas and nays with no other Senator on the floor. Everybody is in committee meetings. I am supposed to be in a Foreign Relations Committee meeting myself.

So I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DECONCINI. 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. DECONCINI. Mr. President, the Senator from North Carolina [Mr. HELMS] has agreed we will stack the vote on this amendment when the time runs out, or whenever it is all yielded back. So I ask unanimous consent the vote on the Helms amendment, No. 780, occur immediately before the next rollcall vote that will occur during consideration of the pending bill.

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

Mr. DECONCINI. Mr. President, I suggest the absence of a quorum, and that time be charged in the normal order of the agreement.

The PRESIDING OFFICER (Mr. ROBB). Without objection, it is so ordered. The clerk will call the roll.

The assistant 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.

Who yields time?

Mr. THURMOND. I yield myself such time as may be required.

The PRESIDING OFFICER. The Senator is recognized, with the time charged to the Senator from North Carolina.

Mr. THURMOND. I rise in strong support of the amendment being considered. This important amendment which I have cosponsored instructs the Sentencing Commission to increase the penalties for individuals who receive or transport child pornography.

Mr. President, this amendment will ensure that the thugs who traffic in child pornography serve time in prison. The link between child pornography and child molestation is close. Ted Bundy, who was executed for the brutal murder of a young girl, stated shortly before he was executed that pornography helped fuel his evil desires to commit heinous acts.

Child pornographers are vicious criminals. They steal innocence away from our children and permanently scar them emotionally and physically. Frankly, I can think of no crime more deserving of tough penalties than the sexual exploitation of our children.

I commend my distinguished colleague from North Carolina, Senator HELMS, for offering this amendment, and I am pleased to join him as a cosponsor. I urge the Senate to adopt this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. 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. Time will be charged equally to both sides.

The legislative clerk proceeded to call the roll.

TREASURY, POSTAL SERVICE, EXECUTIVE OFFICE OF THE PRESIDENT AND INDEPENDENT AGENCIES APPROPRIATIONS, FISCAL YEAR 1992

The Senate continued with the consideration of the bill.

AMENDMENT NO. 780

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, the distinguished Senator from Louisiana mentioned to me that he wanted time.

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

Mr. HELMS. Yes.

Mr. BREAUX. I make the comment I am waiting for our colleague, Senator ROTH, from Delaware in connection with what we are trying to do. I think it appropriate we wait. We will try to get time this afternoon when we are both on the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, will you tell me the time situation?

The PRESIDING OFFICER. The Senator has 9 minutes and 25 seconds on the amendment of the Senator from North Carolina.

Mr. HELMS. The other side?

The PRESIDING OFFICER. The other side has 15 minutes and 46 seconds.

Mr. HELMS. Who is managing on the other side?

The PRESIDING OFFICER. The Chair informs the Senator from North Carolina the Senator from Arizona was previously managing that time.

Mr. HELMS. It does not help much right now, does it?

I am inclined to yield back the time on this amendment because I have heard no opposition to it.

Mr. President, since we have the distinguished Senator from Utah on the floor let me ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. HELMS. I understand. Gee, it is hard to get Senators to come, is it not? We had some questions.

I was ruminating, Mr. President.

I suggest the absence of quorum with the time to be charged to each side.

Mr. HATCH. Will the Senator withhold and yield to me?

Mr. HELMS. Yes.

Mr. HATCH. I would like to ask for yeas and nays.

Mr. HELMS. I think we need both managers.

The PRESIDING OFFICER. The Chair will advise the Senator from Utah there is not a sufficient second.

The Senator from North Carolina suggests the absence of a quorum with the time to be charged equally to both sides. Is there objection?

Mr. KENNEDY. There is objection.

The PRESIDING OFFICER. Objection is noted.

Mr. HELMS. I did not notice the Senator from Massachusetts.

The PRESIDING OFFICER. The Chair recognizes the Senator from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator is speaking on time that has 15 minutes and 41 seconds.

Mr. KENNEDY. Remaining?

The PRESIDING OFFICER. Remaining.

Mr. KENNEDY. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. The Senator is recognized for up to 7 minutes.

AMENDMENT NO. 734

Mr. KENNEDY. Mr. President, I strongly oppose the amendment of the Senator of North Carolina. It purports to give peace of mind to patients by terrorizing physicians and other health care workers.

In fact, the Helms amendment would do nothing to achieve the goal we all care most deeply about—making the workplace safe for all patients and all health professionals. Instead, through threats of criminal sanctions, the amendment will exacerbate the very situation we are striving to avoid—a risk of HIV transmission between doctors or dentists, and their patients.

Right after this debate, Senators MITCHELL, DOLE, HATCH, and I will be proposing an alternative amendment which has strong bipartisan support. Our alternative, which the leadership of this Senate has worked hard to craft, would enact the best recommendations of our public health experts by implementing the new guidelines issued by the CDC earlier this week.

These guidelines are directly targeted to address the problem of reducing the risk of HIV transmission in the medical workplace. It does so through concrete measures and infection control procedures.

This amendment assures that the collective expertise of the Nation's leading public health officials will become the standard throughout the country.

It is critical for Congress to respond quickly, but also wisely, to the concerns of our many citizens. We have all been deeply moved by the suffering of Kimberly Bergalis, whose life has been cut short through the lax practices of a dentist with HIV. But now, more than ever, we must use sound public health principles that can genuinely protect patients from the risk of HIV transmission.

Strict use of universal precautions careful disinfection of equipment and instruments, and voluntary testing of health care workers doing exposure prone procedures are the surest, safest ways to achieve our goal. We are now finding out that correct cleaning of the dentist's drill and proper use of his equipment might have spared Kimberly Bergalis this terrible infection.

By contrast, we have seen how coercive measures divert precious resources and drive the epidemic underground. Time and time again, we have seen how policies hastily derived on the basis of fear have led to unnecessary suffering and unintended outcomes.

Using the best of science available to us, we can improve the situation by implementing the CDC guidelines and voting for this bipartisan amendment, instead of making it worse by resorting to criminal sanctions.

The first requirement of the health profession and of any doctor is to "Do no harm." That should also be the requirement for any action by Congress on this critical and highly charged emotional issue: "Do no harm."

Let us make no mistake. The Helms amendment would do more harm than good. It would do nothing to protect the health of the American people.

Worse, it could seriously undermine the willingness of health care workers to seek HIV testing when they know they have been placed at risk.

To vote for this amendment to control the risk of HIV transmission would be hypocrisy at the least, and dangerous in the extreme. Many more Americans are more likely to be unknowingly exposed to AIDS if their doctor faces a 10-year jail sentence, than if a careful, considered review were available to guide that doctor into safe practices under the CDC guidelines.

The Helms amendment proposes that any health care worker who knows he is HIV positive and intentionally provides a medical or dental treatment to a patient without prior disclosure will be imprisoned not less than 10 years, fined $10,000, or both.

Treatment, as defined in this amendment, would include the performance of any medical diagnosis or procedure that involves an invasive physical contact between the patient treated and the professional administering it.

The most routine kinds of medical procedures might fall under this particular definition, such as a doctor looking at a child's sore throat with the aid of a tongue depressor.

The broad, blunt language of this amendment could include over 90 percent of the Nation's physicians in a high-risk category, when about only 25 percent are directly involved in surgery. Senator HELMS would like us to believe that the other 75 percent of physicians representing more than 400,000 professionals, also pose a serious threat to their patients.

Senator HELMS' reaction arises out of fear, but his fear is not shared by the medical experts of the Nation's public health service in the Bush administration. The actual risk of transmission is very low, and it is limited to specific types of exposure-prone procedures, not all contacts between doctors and patients.

But let us not stop at physicians. What about the 2 million nurses who are practicing? Or the millions of other health professionals: The laboratory technicians, medical technologists, or therapists? How many of these workers are performing medical diagnostic work or a procedure that involved invasive contact? The list goes on and on. There are as many scenarios as there are treatments in the medical profession.

When these risks are so low that they cannot even be meaningfully measured, the Helms amendment is not the best way to use our scarce resources in the name of patient safety. It raises false hopes and provides only false security and comfort.

AIDS is already threatening HIV-positive doctors with capital punishment. What good does the Helms amendment do to threaten them with 10 years in prison?

We know what harm it will do.

The most predictable effect is to put our patients at greater risk than they are today. What health professional will want to take a test, if jail is at the end of the test result? The Helms amendment provides no alternatives, no options for the countless workers who daily risk occupational exposure.

The CDC guidelines allow for a expert review panel to assess what practices may safely be pursued. Not so under this amendment.

In fact, if this amendment is voted into law, we would soon be in double jeopardy. What health care worker will want to take care of any patient suspected of being at high risk for HIV? How many young students will turn

away to pursue other, less chancy careers? This is a situation we all would regret, professionals practicing medicine, yet who are afraid to be tested; a system where some people cannot find even a doctor willing to care for their illness. Resorting to criminal penalties is not the answer to this problem.

Our alternative amendments is to adopt the CDC guidelines nationwide. A letter has been sent to every Senator that reads as follows:

These guidelines represent a consensus on this issue among scientists and public health professionals as the best way to protect the health of the American public while maintaining an adequate system of health services. During debate on the Senate floor on July 11, an amendment was offered addressing this topic, but consideration of the amendment was postponed until this week, so that the CDC guidelines could be issued and Senators would have the opportunity to review them. After reviewing these guidelines, we are in agreement that they provide the most effective means of providing genuine protection for patients against the possibility that they could be infected with HIV transmitted from their physician, dentist, or other health care worker. This amendment respects the scientific judgment of Federal public health officials and the traditional right of the States to determine their own public health regulations. We urge you to vote for this amendment as the Senate's position on this complex but extremely important issue of health policy.

This will be the alternative amendment.

The choice we face is clear.

Either we will vote to instill fear and avoidance among physicians and other health care workers who are willing to care for us, or we will vote to strengthen our health care system and make it safer for everyone by adopting these guidelines. We cannot have to both ways. To vote for penalties in the Helms amendment is a mockery of the CDC guidelines, and dashes any hope of their implementation in a sound and rational manner. It is time to listen to those with the responsibility of protecting the health and safety of all Americans. I hope the Senate will vote for the bipartisan leadership amendment, and reject the Helms amendment.

This is a public health problem, not a criminal law problem. The best answer will be in rational public health policies, not irrational appeals to the public's fears and threats of criminal punishment.

Mr. President, how much time remains?

The PRESIDING OFFICER. The opponents control 6 minutes and 12 seconds.

Mr. KENNEDY. And the proponents?

The PRESIDING OFFICER. The proponents control 7 minutes and 56 seconds. Has the Senator from Massachusetts yielded the floor?

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

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, will the distinguished Senator from North Carolina yield me a few minutes on the pending amendment?

Mr. HELMS. In just one moment.

I yield myself whatever time I may take.

The PRESIDING OFFICER. The Senator is recognized for up to 7 minutes and 50 seconds.

Mr. HELMS. In the first place, the Senator from Massachusetts was not discussing the pending amendment, which is fine. Under the rules he may discuss what he wishes.

Second, we will address this later. There were several inaccuracies in what he said.

But certainly I yield to my friend from Utah such time as he may need.

AMENDMENT NO. 780

Mr. HATCH. I thank my colleague from North Carolina.

Mr. President, what our children and our families are going through in this society is pathetic. We are inundated with filth. We are inundated with pornography. Almost every movie that comes out today is an R rated movie. Now, I am not against R rated movies. It is just that I do not think people should spend all their time watching them. If it is not violence, it is sex. That is fine. They can do whatever they want to with regard to approved movies.

What the distinguished Senator from North Carolina is talking about here is child pornography, materials that are absolutely geared to wrecking the lives of our young children and distorting the way they grow up, ruining their futures and making them, through the force of psychological exhibition, become people that they would not want to be, their parents would not want them to be, no one would want them to be.

Mr. President, I think we ought to all support this child pornography amendment. It is about time we did. It is about time that we doubled those particular penalties under the guidelines, as the distinguished Senator from North Carolina would like us to do. It is about time we got tough on these people.

And I do not want to hear any free speech arguments made in favor of child pornography. I do not think there are any. The Constitution provides that we have a right as a society to stamp out things that literally do not deserve the title "free speech." The best way to do that is to make the criminal penalty so stiff that people will have a greater reticence to enter into doing these types of things. Our laws are fairly clear on what is and is not pornography. It is difficult to always define it, but the fact of the matter is our courts are capable of resolving those issues.

I commend the distinguished Senator from North Carolina for taking the position he has and for bringing this issue to the floor. I have confidence that the courts will resolve these issues in a way that will not impinge upon free speech under the Constitution.

Mr. President, I thank the distinguished Senator from North Carolina for bringing this amendment to the floor and I thank him for the time he has given me at this point.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, obviously I am grateful to my friend from Utah. He has been a stalwart in efforts to preserve, protect, and restore the importance and significance of family in this country. And I thank him for his comments.

As to the pending amendment, I am prepared to yield back the remainder of my time if the other side is willing to do that also. But first 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. HELMS. Mr. President, I shall not reiterate my disgust and my contempt for sleazy people who deal in child pornography. And I am puzzled and baffled as to why the Sentencing Commission decided to limit the penalty for receiving child pornography to probation. I think they ought to serve time in jail. They ought to have time to sit and think about what they have done.

I happen to have the blessing of being a grandfather to seven grandchildren, including five little girls. I say to the distinguished occupant of the Chair, that were they to be victimized by these sleazeballs, I am not sure I could restrain myself. I have talked with many parents and grandparents who have experienced this trauma. I think the Senate will make a severe mistake if it does not overwhelmingly support the pending amendment.

Mr. President, I am prepared to yield back the remainder of my time if the other side is willing to do the same.

The PRESIDING OFFICER. Does the Senator from Arizona yield back the time?

Mr. DECONCINI. Yes.

Mr. HELMS. I thank the Senator. I yield back my time as well.

PRIVILEGES OF THE FLOOR

Mr. DECONCINI. Mr. President, on behalf of the Senator from South Dakota [Mr. DASCHLE] I ask unanimous consent that a congressional fellow serving in this office, Mr. Mark Peterson, be allowed floor privileges during the consideration of the pending legislation before us for today, including the vote.

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

Mr. DECONCINI. Mr. President, I do yield back the remainder of the time on this particular first Helms amendment No. 780.

The PRESIDING OFFICER. All time is yielded back on amendment No. 780.

Under the previous order the rollcall vote on amendment No. 780 will occur immediately prior to the next reported rollcall vote.

AMENDMENT NO. 734

The PRESIDING OFFICER. Under the previous order, the Senate will now consider amendment No. 734, also by the Senator from North Carolina.

Who yields time?

Mr. HELMS. Mr. President, I suggest the absence of a quorum, to be charged against my side in this instance.

The PRESIDING OFFICER. The absence of a quorum has been suggested with the time chargeable to the Senator from North Carolina. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. SHELBY). Without objection, it is so ordered.

AMENDMENT NO. 734

Mr. HELMS. Mr. President, Senators should be familiar with the amendment at the desk. It is the same amendment which I attempted to offer to the crime bill and the same amendment which I attached to the Treasury-Postal appropriations bill.

The Helms amendment—which is cosponsored by Senators THURMOND, SMITH, and LOTT—says that if a doctor, dentist, nurse, or health care worker—that is a surgeon, obstetrician, or surgical nurse—who performs or is involved with invasive medical techniques and knows he has AIDS and fails to notify his patients of that fact is subject to a fine and jail term of not less than 10 years. It does not require mandatory testing and does not apply to emergency situations.

Let me say it again, for the record, the Helms amendment does not require mandatory testing. It does not require that the psychiatrist or the podiatrist undergo any testing nor does it compel them to disclose to their patients that they have AIDS. Using language provided by the distinguished Republican leader, the Helms amendment says that if you perform invasive medical procedures you must notify your patients if you know you have AIDS.

Mr. President, the inspiraton for this amendment is Kimberly Bergalis, a 23-year-old Florida woman who is now in the last stages of AIDS-related tuberculosis, a condition which is slowly destroying her brain and body. As the July 1 edition of Newsweek states, "sometime in the next few days, Bergalis will probably become the first American to die of AIDS, after being infected by her dentist * * *."

For the last few months, Kimberly has taken her struggle to the American people, demanding that HIV-infected doctors, dentists, and health care workers be required to disclose their condition to their patients. You see, Kimberly's dentist had AIDS. He knew he had AIDS but he refused to notify his patients of his condition. Now Kimberly Bergalis is about to die and four others who were treated by this man have tested positive for the virus.

On July 9, our former colleague and the current Governor of Florida, Lawton Chiles, visited Kimberly as she lay dying. Governor Chiles put it very plainly:

> It's a lot like being in the presence of a saint. I told her how much I admired her, I told her I thought she'd already protected many lives that wouldn't have been protected before * * * she is an innocent victim.

Mr. President, a June 20, 1991, Gallup Poll found that 95 percent of the American people believe that surgeons who know that they have AIDS should be required to tell patients if they are infected with the AIDS virus. The same poll found that 94 percent of Americans believe that all physicians and dentists should be required to tell their patients that they have AIDS if they know they are infected.

On Wednesday, the Charlotte Observer published a poll, taken across the State of North Carolina, which revealed that 93 percent of North Carolinians feel that health care workers with HIV should inform their patients if they are infected. In fact the poll went on to say that 72 percent of North Carolinians believe that health care workers should stop practicing if they know they are a threat to the health of their patients.

The American people in general and the people of North Carolina in particular, are ahead of the politicians and professional activists in this country who have for too long treated AIDS as a civil rights issue rather than the public health threat it really is.

The story of the brave woman in Florida is not isolated. In the State of Minnesota, a pediatric surgeon continued to perform deliveries, and rectal, and vaginal examinations months after he found out he had AIDS. In the most shocking part of this story, a Minnesota television station broadcast pictures of this doctor delivering a baby while his bare arm was covered with sores.

When asked about the sores by the mother of the child he was about to deliver, the doctor said that the sores were just an allergic reaction. This man knew he had the AIDS virus well before he delivered that baby. As one of his patients told Newsweek, "he takes an oath to save lives not give a death sentence."

In my own State of North Carolina, a health care trainee at a major hospital in eastern North Carolina worked with patients for more than a year after finding out he had the AIDS virus. Two thousand residents of the Fayetteville and Raleigh areas have begun receiving letters from military and county health officials saying that they might have been exposed to AIDS because their dentists had the disease.

On July 11, the distinguished senior Senator from Massachusetts, said that the chance of passing along the HIV virus was miniscule and that there were only five known cases of AIDS transmission from doctor to patient. I will respond to the Senator from Massachusetts in several ways.

First, no chance is miniscule if we are talking about potentially handing a death sentence to an unsuspecting person; the five reported cases of AIDS in Florida are five too many.

Second, the transmission of AIDS is not the only health issue at work here. As Senators know, people with AIDS carry many potentially life threatening diseases, such as tuberculosis, hepatitis, and virulent strains of cytomeglo-virus [CMV], which when brought into contact with pregnant women, significantly raises the chance of miscarriage and birth defects.

Third, he is correct in saying that we only know of five cases. But he also knows that the AIDS virus has a latency period of weeks, months, and years. Kimberly Bergalis was infected with AIDS in 1987; she didn't discover she had the virus until 1989. In the Minnesota case alone we cannot begin to imagine what the human cost will be due to one criminal physician who treated 1,300 women and children after he knew he had the virus. What does one say to the mothers in Minnesota, one of whom told Newsweek that every time she sees her infant with a diaper rash she worries if her child is infected with the AIDS virus.

On Monday, the Centers for Disease Control issued guidelines which recommend that doctors and dentists who perform invasive medical procedures stop doing them if they are infected. The distinguished Republican Leader will shortly offer an amendment to implement these regulations. I support his efforts, but they in no way lessen the urgency of the Helms amendment.

What happened in Minnesota and what happened in Florida is criminal. To recklessly expose thousands of innocent Americans to this deadly disease and to create wholesale panic in countless communities is a vile act which should be rooted out and punished.

The Helms amendment is a necessary compliment to the legislation of the Senator from Kansas [Mr. DOLE].

I am not talking about hundreds of medical professionals with this amendment. The vast majority have honorably abided by the opening sentence of the Hippocratic Oath: "I shall first do no harm." However, there are a few people in the medical establishment who have thrown away their oath and duty to others. The doctor in Minnesota, and the dentist in Florida, and

the dentists and health care workers in North Carolina should be treated no better than the criminal who guns down a helpless victim on the street; the effect is the same.

Mr. President, many people have said that we should do something to protect the thousands of medical workers who are at risk from patients who are infected with AIDS. I agree. I am the father of a nurse. I want my daughter protected. That is why I have, for the last 6 years attempted, to bring attention to the callous disregard for public safety and common sense which has been exhibited by the AIDS lobby and its allies in the Senate.

I give health care workers across the country my pledge that I will do everything in my power to ensure that they no longer fall victim to the political agenda of the AIDS activists.

Before I conclude, Mr. President, I want to read to the Senate, a letter Kimberly Bergalis wrote to the Florida Board of Health. Let me warn those listening that parts of this letter are graphic. But remember that this is the cry of a young woman whose life was ruined by a so-called healer who didn't have the decency to tell this beautiful young lady that he was putting her life at risk.

Here is the letter:

When I was diagnosed with AIDS in December of '89, I was only 21 years old. It was the shock of my life and my family's as well. I have lived to see my hair fall out, my body lose over 40 pounds, blisters on my sides. I've lived to go through nausea and vomiting, continual night sweats, chronic fevers of 103–104 that don't go away anymore. I have cramping and diarrhea. I now have confusion and forgetfulness. I have lived through the torturous acne that infested my face and neck—brought on by AZT. I have endured trips twice a week to Miami for 3 months only to receive painful IV injections. I've had blood transfusions. I've had a bone marrow biopsy. I cried my heart out from the pain of the biopsy.

I lived through the fear of whether or not my liver has been completely destroyed by DDI and other drugs. It may very well be. I lived to see white fungus grow all over the inside of my mouth, the back of my throat, my gums, and now my lips. It looks like white fur and it gives you atrocious breath. Isn't that nice? I have tiny blisters on my lips. It may be the first stages of herpes.

I was infected by Dr. Acer in 1987. My life has been sheer hell except for the good times and closeness with my family and my enjoyment for life and nature. AIDS has slowly destroyed me. Unless a cure is found, I will be another one of your statistics soon.

Who do I blame? Do I blame myself? I sure don't. I never used IV drugs, never slept with anyone and never had a blood transfusion. I blame Dr. Acer and every single one of you bastards. Anyone that knew Dr. Acer was infected and had full-blown AIDS and stood by not doing a damn thing about it. You are all just as guilty as he was. You've ruined my life and my family's. I forgive Dr. Acer because I believe the disease affected his mind. He wasn't able to think properly and he continued to practice.

Do you know my family will be emotionally scarred by this forever? Do you know my mother lost her mother, father, grandfather and dog in a car accident when she was a teenager—and now she's going to lose her first born child?

Have you ever awakened in the middle of the night soaking wet from a night sweat—only to have it happen again an hour later. Can you imagine what it's like to realize you're losing weight in your fingers and that your body may be using its muscles to try to survive. Or do you know what it's like to look at yourself in a full-length mirror before you shower—and you only see a skeleton? Do you know what I did? I slid to the floor and I cried. Now I shower with a blanket over the mirror.

Well—I think I've said enough. Like I said—all is forgiven by me—there's no hard feelings anymore. But I will never forget.

P.S. If laws are not formed to provide protection, then my suffering and death was in vain.

I'm dying guys. Goodbye.

Signed, Kimberly Bergalis.

I ask unanimous consent that articles from the Winston-Salem Journal, the Charlotte Observer, Newsweek, and Human Events be printed in the RECORD at this point.

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

[From the Wall Street Journal, July 7, 1991]

HELMS OFFERS PROPOSAL ON AIDS

(By Jon Healey)

WASHINGTON.—Prompted by the story of a woman who contracted AIDS from her dentist, Sen. Jesse A. Helms has tried repeatedly in the past two days to offer an amendment to punish doctors, dentists and nurses who have the AIDS virus but keep it secret from their patients.

Critics of his proposal, led by Democratic Sen. Edward M. Kennedy of Massachusetts, said that it would discourage doctors who might be infected from seeking tests and treatment. They also urged the Senate to wait until next week, when the Centers for Disease Control is scheduled to issue its guidelines for protecting both doctors and patients against the AIDS virus.

Helms' opponents twice blocked him from getting a vote on his proposal, and it was not clear last night how the issue would be resolved. In one tense exchange, Majority Leader George Mitchell, D-Maine, offered to schedule a vote on Helms' proposal next Thursday, but Helms would not accept the delay.

The AIDS amendment would require "health care providers" who know that they have the acquired immune deficiency syndrome virus to tell patients their condition before engaging in any "invasive physical contact." If they kept the virus secret from their patients, they would face a minimum penalty of 10 years in prison or a $10,000 fine.

Helms often brought up the case of Kimberly Bergalis, a woman who contracted AIDS from her dentist in Florida.

Helms also cited several other cases of health-care workers who continued to practice after contracting AIDS, including cases in Wake County and at Fort Bragg in North Carolina. Those doctors "should be treated no better than the criminal who guns down a helpless victim on the street, the effect is the same," Helms told the Senate on Wednesday.

Opposition to Helms' amendment came from medical groups and AIDS activists, who argued that the amendment was self-defeating.

Donna Richardson, the top lobbyist for the American Nurses Association, said that patients are protected by such infection-control precautions as rubber gloves and sterilized equipment, not by disclosure requirements.

The Centers for Disease Control has estimated that 50,000 health-care workers have the AIDS virus, but only five cases have been found of the virus being passed along to patients. All five involved Ms. Bergalis' dentist, who did not take common precautions against infections, Ms. Richardson said.

[From the Charlotte Observer, July 12, 1991]

SENATOR HELMS: FORCE DOCTORS TO REVEAL OWN HIV INFECTION

(By John Monk)

Doctors who are infected with the AIDS virus and who don't notify their patients should be fined up to $10,000 or imprisoned for 10 years, according to a proposal by Sen. Jesse Helms, R-N.C.

"None of these should be treated any different than the criminal who guns down helpless victims in the street," said Helms in a Thursday speech to the Senate.

Helms' proposal would apply to more than just doctors. Any health-care professional who tests positive for the HIV virus and subsequently performs "intrusive procedures" should face such penalties, Helms says, if they won't reveal their status to their patients.

The proposal—made first as an amendment to the Comprehensive Violent Crime Control Act of 1991—disrupted the Senate Thursday.

Senate leaders, who had wanted to pass the major crime bill Thursday afternoon, tried to outflank Helms by temporarily dropping the crime bill and bringing up a treasury appropriations bill.

But Helms then re-introduced his AIDS amendment on the treasury bill, prompting a vow from Sen. Edward Kennedy, D-Mass., that he would filibuster the treasury bill to stop Helms' amendment.

Thus, in the space of a few hours, Helms—who is known for wily maneuvers that focus attention on controversial issues—had managed to tie up two major bills.

As Thursday night wore on, the crime bill remained in limbo but some sources expected it to pass late Thursday—most likely without Helms' amendment.

Earlier in the day, in an interview in his office, Helms said he was outraged about health-care workers who place peoples' lives in jeopardy by exposing them to AIDS.

Quoting AIDS victim Kimberly Bergalis, a 23-year-old Florida woman whose remarks were published recently in Newsweek magazine, Helms called doctors who won't reveal they have AIDS and those who give it to their patients "bastards."

"That is exactly what they are. No, that is a reflection on bastards, to call them bastards. They are worse than that," Helms said.

"I've got some grandchildren I'm very fond of. If some suck-egg mule did that to them, I don't know if I'd be out of prison myself," Helms said.

Bergalis, who is dying, contracted AIDS from her dentist, Dr. David Acer, who died last September. In recent months, Bergalis has become the center of a nationwide controversy over whether health-care professionals should reveal if they have AIDS. Acer is the only health-care professional who is known to have transmitted AIDS to patients.

But Helms said there could be more victims of other doctors. An N.C. dentist and a

Minnesota physician have only recently revealed they worked with patients after being infected by AIDS.

The N.C. dentist, who died of AIDS complications last month, mailed letters to 800 former patients, telling them they might want to be tested for AIDS.

The American Medical Association didn't have a position on Helms' amendment Thursday. But a spokeswoman said the AMA's policy is that doctors who test positive for AIDS should not practice invasive procedures unless they notify patients of their disease.

A spokeswoman for the AIDS Action Council said her group was opposed to Helms' amendment.

"He is fanning the flames of fear and behaving very irresponsibly, making people much more frightened than they need to be," said AIDS Action Council spokeswoman Carisa Cunningham.

Supporting Helms on the Senate floor was Sen. Strom Thurmond, R-S.C., who said, "Those who recklessly provide medical treatment to unknowing patients should be held accountable."

But Sen. Paul Simon, D-Ill., said the Senate needed to hold hearings on the issue. "Let's know what we are doing when we vote on a life and death matter."

To Helms, the issue was simple.

"I'm saying the patient has a right to know," Helms said.

"If this doesn't involve a crime, please spell out to me what does."

[From the Charlotte Observer, July 14, 1991]

AIDS DEBATE: SHOULD DOCTORS REVEAL WHEN THEY HAVE THE VIRUS?

(By Karen Garloch)

The fear started last July, when federal officials disclosed that a Florida dentist had given AIDS to a patient.

It grew when officials learned four more of his patients had been infected.

And it continues with each new revelation that a health-care worker is infected with HIV, the deadly virus that causes AIDS. Within the past two months, a dentist at Fort Bragg and one in Wake County disclosed they had the virus.

"It just scares you," said David Brown, a laid-off factory worker in Sumter, S.C. "You could be seeing a doctor for 10 years, and all of sudden he's got it, and you find out and it's too late."

More and more patients are demanding to know whether their doctor is infected with the AIDS virus. The growing debate pits doctors against patients and the right to know against the right to privacy.

Health experts emphasize that the risk of getting infected from a dentist or doctor is minuscule. Almost 6,500 U.S. heath-care workers have contracted AIDS—two-thirds of them have died. But only five people of the more than 170,000 AIDS cases in the United States since 1981 are known to have contracted the virus from a health-care worker. All were patients of dentist David Acer of Stuart, Fla., who died of AIDS in September.

The big risk, experts say, is that patients will transmit HIV to doctors doing surgery or other invasive procedures, such as delivering babies. Nationally, 40 health-care workers have contracted HIV from patients, usually from needle sticks.

AIDS is transmitted through exchange of blood or semen, as might happen in vaginal or anal intercourse, sharing needles with drug users, or coming into contact with contaminated blood.

"An individual's risk of getting HIV from going to a doctor is probably less than driving to work in the morning—and yet there is this fear," said a Charlotte doctor who stopped practicing three years ago when he was diagnosed with AIDS.

The doctor, whose first name is David, asked that he not be identified to protect his parents. He is gay, and his companion of 18 years died of AIDS recently.

David, 45, knew he was infected with HIV for two years before he stopped practicing emergency medicine at Mercy Hospital in 1988.

In the early years of the AIDS epidemic, he said, no one ever reported getting the virus from a doctor. Still, he said, he always used precautions, such as rubber gloves and masks.

"I can't imagine any way I could have transmitted the virus to anyone else," he said. "There was never even any potential of my blood coming in contact with the patient at all."

Mercy Hospital officials said they reviewed his practice and said they found no need to notify patients, because he hadn't placed them at risk.

Last week, the issue reached Congress.

Thursday, Sen. Jesse Helms, R-N.C., proposed that any health-care worker with the virus who doesn't tell patients be fined up to $10,000 or imprisoned for 10 years. Helms' aides said Friday they have received many calls in support.

Helms quoted Kimberly Bergalis, who is dying of AIDS she got from Acer. In a deathbed letter to Florida health officials, she blamed "every single one of you bastards" who knew he was infected and did nothing.

"I've got some grandchildren I'm very fond of," Helms said. "If some suck-egg mule did that to them, I don't know if I'd be out of prison myself."

Many doctors find Helms' proposal extreme, even though they agree with the American Medical Association and the American Dental Association that doctors who are HIV-positive, should tell patients or give up surgery.

"Patients should have the right to know," said Dr. Bartlett Warren, a Charlotte dentist. "But it shouldn't be a mandatory thing."

Warren and his staff wear gloves and masks and are using more disposable instruments. Federal officials found that Acer didn't always disinfect his equipment or change gloves between patients.

The worry goes both ways.

"We're the ones who have blood on our hands every day," said Dr. Kenneth Wood, an orthopedic surgeon and Mecklenburg County Medical Society president.

"I would agree that doctors should be tested," said Charlotte orthopedic surgeon Thomas Moore, "but I think the patients should be tested, too."

Moore operated on an HIV-infected patient Friday. He wore a helmet shield, boots, impermeable gown and thick gloves.

"Human nature being human nature, people just don't take 100% precautions 100% of the time," he said.

A year and a half ago, Moore said, he unknowingly operated on an HIV-infected patient and let a medical student participate.

"I wouldn't allow that, if I had known," he said. "In that situation you need experienced people."

Recently, when officials disclosed that a Fort Bragg dentist was HIV positive and that one in Wendell had AIDS, patients were told so they could decide whether to be tested.

The Wendell dentist, Dr. John Spell, 46, died June 30, a day after the letters went out.

In both cases, officials said the possiblity of transmission was low. And in Wendell, 20 miles southeast of Raleigh, residents who had known Spell defended him.

"I know that John double-gloved, he wore goggles and a mask," said Mary Anne Globig, a nurse and high school classmate, "I felt very comfortable with John working on me. I don't have the insane fear of AIDS that some people have." Nevertheless, she was tested.

Frances Henderson, a family friend, accused the media of being on a "witch-hunt."

"He wouldn't have endangered his patients. I don't believe he has infected anybody with AIDS."

David, the Charlotte doctor with AIDS, said doctors who are HIV positive should stop doing surgery. But he said widespread HIV testing would be costly and not particularly beneficial.

Someone can be infected with HIV for up to six months without testing positive.

"You can't test people every day," he said. "The results of that test are only good for that day. You could go out that evening and acquire the virus."

David said he understands why patients are worried but thinks the "mass hysteria is unfounded."

"If this virus were easy to transmit by a physician to a patient, and if one doctor could infect five people, then surely out of thousands of doctors, there would be lots more cases to write about."

Dr. Jim Horton, a Charlotte infectious-disease specialist who has treated AIDS patients since 1982, agrees.

"My biggest concern is that people are misplacing their fears," Horton said. "They should be afraid of AIDS, but they need to be much more concerned about sexual activity and drug use than about health-care workers."

[From the Charlotte Observer, July 16, 1991]

POLICY URGES AIDS TESTS FOR DOCTORS

(By Karen Garloch)

Some doctors and dentists say that if they have to take AIDS tests under new federal guidelines issued Monday, then their patients should, too.

The Federal Centers for Disease Control's new guidelines recommend that doctors and dentists who do invasive procedures, such as surgery or pulling teeth, get AIDS tests and stop doing such procedures if they are infected. The only exception would be if a doctor gets approval from an expert panel and tells patients.

CDC guidelines don't have the force of law, since states regulate the practice of medicine.

"I don't want the health-care worker singled out for AIDS testing until the patients are tested." said Dr. Francis Robicsek, a world renowned heart surgeon from Charlotte. "We are the ones who are in blood up to our elbows."

"You're not going to get voluntary compliance among healthcare workers unless all patients can be tested," added Dr. Jared Schwartz, a Charlotte pathologist who has been active on state and local AIDS study committees.

Examples of invasive procedures are abdominal, gynecological or heart surgery, root canals and pulling teeth. The guidelines don't cover health-care workers who do only simple tasks, such as cleaning teeth or giving shots.

The CDC didn't recommend mandatory AIDS tests for any health-care workers, saying. "The current assessment of the risk. . .

does not support the diversion of resources that would be required to implement mandatory testing."

The CDC has reported just one case of AIDS transmission from doctor to patients: Florida dentist, Dr. David Acer, now dead of AIDS, is believed to have infected five patients with the AIDS virus. Concern over the risk of doctor to patient transmission prompted the new guidelines and other Congressional proposals.

Last week, U.S. Sen. Jesse Helms, R-N.C., proposed to make it a crime for a health-care worker infected with the AIDS virus to practice without telling patients.

A spokesman in Sen. Robert Dole's office said the Kansas Republican intends to introduce an amendment Thursday that would pressure states into tying the CDC guidelines to state medical licensing procedures.

Dole's proposal would let the U.S. government sever certain federal money to states that don't tie licensing to the CDC guidelines.

Schwartz said the CDC's recommendations make it extremely difficult not to have mandatory testing. It's a chicken and egg thing. If you want me tested, I want you tested. And I don't want you tested last week, I want you tested now."

Someone can be infected with HIV, the human immunodeficiency virus that causes AIDS, for weeks or months without testing positive, Schwartz said. "A negative test still does not guarantee that either the patient or the health-care worker is not infected.

"The bottom line is, over the next couple of years, we're going to end up doing one hell of a lot of tests, and it's going to make some people feel good, but it's not going to accomplish much.

Dr. Deborah Calle Foushee, a Charlotte dentist who specializes in gum disease said she was tested for AIDS a year ago but doesn't think tests should be mandatory.

"I really think it's something best left up to the individual . . . The likelihood of HIV transfer from a dentist to a patient is extremely remote.

"It's not something that I feel is a real threat, just because I think the barriers are effective . . . I am always well-gloved and well-masked and well-goggled."

[From the Charlotte Observer, July 17, 1991]

POLL: DOCTORS WITH AIDS SHOULD STOP PRACTICING

(By Karen Garloch)

Most Carolinians think AIDS-infected doctors and dentists should tell patients about their infection and stop practicing, according to the 1991 Charlotte Observer/WSOC-TV Carolinas Poll.

But they also think AIDS-infected patients should tell their doctors and dentists, the poll shows.

"I would think nobody would really want to go to someone that had it," said Linda Wilkinson, a 27-year-old mill worker in Rowan County. "I'd be scared. . . If he's got it, he needs to tell you. If you've got it, you need to tell him."

Seven of 10 Carolinians polled said they are "somewhat" or "very" concerned about getting AIDS from a doctor or dentist, a concern prompted by the recent discovery that a Florida dentist infected five of his patients with the AIDS virus.

On Monday, federal health officials recommended that doctors and dentists get regular AIDS tests, and if infected with the AIDS virus, stop doing surgery and other procedures in which they're exposed to patients' blood.

For now, doctors can order AIDS tests for patients only with patients' consent.

Based on responses from 932 Carolinas adults polled June 24 through July 3, concern about AIDS is greater than ever.

"Each day they come up with something new," said David Brown, 35, an unemployed factory worker in Sumter, S.C. "It's scary."

Four years ago, when the Carolinas Poll first included questions about AIDS, half those surveyed said they were more concerned about AIDS than about cancer and heart disease. That percentage dropped to 37% in 1989 and went up again to 46% in 1990. This year, it was 52%.

The number of people who said they know someone with AIDS has almost tripled in four years, from 8% in 1987 to 22% this year.

That isn't surprising, since the number of Carolinas AIDS cases has soared.

Since 1987, North Carolina's reported AIDS cases have grown from 231 to 1,938 today; S.C. cases went from 147 to 1,365.

Nationwide, the number of reported AIDS cases has more than quadrupled from about 40,000 in mid-1987 to more than 182,000 today. More than half of the people have died.

Almost everyone polled—more than 93 percent—said health-care workers and patients should inform each other if they are infected with HIV, the human immunodeficiency virus that causes AIDS. Eighty-four percent favored routine AIDS testing for health-care workers.

What should happen if doctors or dentists are infected?

Most respondents, 72 percent, said infected health-care workers should stop practicing; 13 percent said they should continue practicing with stringent protective measures; 11 percent said they should continue practicing, but exclude invasive procedures such as surgery and pulling teeth.

Fannie Ingram, 35, an AIDS educator for the Anson County Schools, said infected doctors should be allowed to continue practicing if they're careful.

"If they're using stringent preventive measures and very, very careful, I don't see a danger there."

She said patients should make sure doctors and dentists wear protective gear.

"When I went to my dentist three months ago, he was not wearing gloves," she said. "I asked him kindly if he would put his gloves on. He had never had a patient ask him to wear his gloves."

Dr. Jared Schwartz, a Charlotte pathologist and AIDS educator, said that instead of routine testing, he would prefer mandatory inspections of dentists' and doctors' offices to make sure they are using gloves, gowns, masks and sterilized equipment.

"The result would be fewer infections of all kinds," he said.

Schwartz noted that the only health-care worker known to have infected patients with AIDS—Florida dentist David Acer—didn't follow proper procedure.

HOW THE POLL WAS CONDUCTED

The 1991 Charlotte Observer/WSOC-TV Carolinas Poll is the 11th annual survey of N.C. and S.C. adults. It is conducted by KPC/Research, the marketing research division of The Charlotte Observer. The poll is based on confidential telephone interviews of 932 people—609 in North Carolina and 323 in South Carolina—between June 24 and July 3. People quoted in articles on poll results agreed to be interviewed by reporters; otherwise, all poll data is confidential.

Poll takers used "random digit dialing." This method provides each household in a telephone exchange an equal chance of being selected, even if the telephone number is new or unpublished. Once a household was contacted, the adult to be interviewed was randomly selected. Four attempts were made to reach respondents, so hard-to-reach adults would not be underrepresented.

The maximum sampling error for 932 interviews is plus or minus 3.2 percentage points at a 95% confidence level, in other words, it is very probably (95 chances out of 100) that if all Carolinas adults were polled, the resulting figure would be within 3.2 percentage points of the figure obtained in the study. The sampling error for subgroups is greater because results are based on fewer interviews. For instance, the sampling error for North Carolina alone is plus or minus 4 percentage points.

The practical difficulties of conducting public opinion surveys may introduce other sources of error that cannot be measured. For example, as a group, those who refused to be interviewed may have had a different opinion.

[From Newsweek, July 1, 1991]

DOCTORS WITH AIDS

It is 80 degrees in the Florida dusk, but Kimberly Bergalis huddles under a quilt on the couch in her family's living room. At 65 pounds, she is half her normal body weight. Her skin is chalk white and her eyes stare blankly at the television blaring out music videos just six feet away. In late March the 23-year-old Bergalis took long walks on the beach; now she can barely lift her arms. She is in the last stages of an AIDS-related tuberculosis that wastes body and brain. Sometime in the next few days, Bergalis will probably become the first American to die of AIDS after being infected by her dentist, Dr. David Acer, who died of AIDS last year.

Bergalis went public with her condition in August, campaigning fiercely for regulations governing HIV-positive physicians and dentists that would require them to disclose their condition and thus prevent anyone else from suffering her fate. Now she is just waiting for the end. "Please get this over with," she whispers hoarsely through her horribly blistered mouth, as her mother combs her hair. Later, after her father bathes her and carries her to bed, he says, "See you tomorrow." And she replies "Hopefully not."

More than a thousand miles away. Dr. Richard Duff, a Minneapolis family practitioner, also contemplates his final days. Duff was diagnosed with AIDS more than three years ago. He believes he contracted the virus sometime between 1985, when he and his wife divorced after 18 years of marriage, and 1988, when they remarried. While he was single, Duff says, "I chased around." Once an athletic 150-pound man who loved to play racquetball. Duff is now barely 110—and maintains that weight only through nightly intravenous feeding. As he sits in his kitchem, slowly spooning peaches into his mouth, he seems 90, not 51. Between the diagnosis and his retirement from practice last week, Duff saw hundreds of patients who did not know he had AIDS.

Duff defends his decision to keep his condition a secret from his patients. Because he avoided invasive medical procedures, he says he "wasn't putting anybody at risk." In fact, he might have gone quietly into the night if not for an incredible coincidence: Philip Benson, one of Duff's colleagues at the Palen Clinic in Minneapolis, found out last fall that he, too, has AIDS. Duff says he knows people will think the two were lovers: "That bothers me incredibly." But, he says, there's no connection between the two cases and he

has no idea how Benson got sick. On June 14 Benson sent 328 patients a letter advising them to get AIDS tests because they had come to him for procedures that might have exposed them to the AIDS virus. In the wake of extensive publicity about Benson, Duff made his public announcement last week. So far, none of Benson's or Duff's patients has tested positive for AIDS. Duff thinks of himself as a role model for other AIDS-infected doctors. Careful physicians, he says, "aren't risky."

Bergalis and the Minneapolis doctors are on opposite sides of the explosive national controversy over AIDS-infected health-care workers. Just a year ago most authorities on AIDS considered it virtually impossible for an AIDS-infected physician or dentist to pass the virus on to patients. Universally accepted precautions—such as rigorous sterilization of equipment, double surgical gloves and masks—were deemed sufficient to prevent the blood contact needed for transmission. In fact, when Bergalis was first diagnosed, health officials investigating her case relentlessly looked for other explanations, such as intravenous drug use or promiscuity. When those avenues provided dead ends, they concluded that Acer had indeed given her AIDS—although health officials say the means of transmission are a mystery. Since then, four other Acer patients have been diagnosed with the same strain of AIDS.

Although the five are still the only patients known to have gotten AIDS from a physician or dentist, their cases have turned the impossible into a frightening reality. Some health officals say the public reaction in recent months has bordered on hysteria. Legislators in several states have introduced bills calling for all HIV-positive doctors to disclose their status to all their patients, a move most medical associations regard as extreme.

According to a Newsweek Poll, more than nine out of 10 Americans think doctors should be required to tell their patients if they have AIDS (poll). Around the country, aggrieved patients have filed lawsuits after learning that their physicians were infected—even though the patients are disease-free. Many patients say they have begun to be suspicious of any doctors they fear fall into a risk group for AIDS.

Indeed, some doctors and patients have begun to view each other as potential agents of destruction, rather than participants in the healing process. Two months ago Morey Filler, a San Francisco obstetrician, was about to perform major surgery on a 38-year-old woman when she suddenly asked him if he had been screened for AIDS. Startled, Filler told her that he and his surgical team were not in any high-risk group and took precautions in surgery. Filler says that he now dresses like a "road warrior" with high plastic boots and gloves. Los Angeles cancer surgeon Mitchell Karlan faced the opposite dilemma recently after performing surgery on a patient with a facial tumor. The procedure was a success and, four days later, Karlan was about to take out the stitches—without gloves—when the patient told Karlan that he was HIV positive and advised the surgeon to protect himself. Karlan thanked the patient, donned gloves and removed the stitches. Universal precautions required in the age of AIDS make surgery "like being on guard duty for 30 days, 24 hours a day," says Karlan. "Every time I pick up a needle, it's like picking up a cobra."

Even as they try to calm these fears, health officials admit that there is some risk for both patient and doctor. According to the federal Centers for Disease Control in Atlanta, there were 6,436 reported cases of health care workers with AIDS from the start of the AIDS epidemic in the early 1980s until this March, including 703 nonsurgeon physicians, 47 surgeons, 171 dental workers and 1,358 nurses. Most experts say these figures probably represent only a small proportion of infected health-care workers since they are all full-blown reported cases of AIDS. Thousands more may have tested HIV positive. Others may be infected but symptom-free and therefore untested.

Health officials still emphasize that it is extremely unlikely that a patient will get AIDS from a physician, dentist or nurse; the much greater risk is that physicians and other health-care workers performing surgery or other invasive procedures on AIDS-infected patients will get the virus from their patients. At last week's international conference on AIDS in Florence, Italy, Dr. Albert Lowenfels of New York Medical College calculated that the risk of transmission from an HIV-infected surgeon to a patient is about one in 48,000.

"The risk closely resembles the risk of a vehicular fatality during transportation to and from the hospital," he concluded. In contrast to the five Florida cases, there are 40 known cases of health-care workers around the country who have gotten AIDS from patients, according to the CDC, most of them from accidental needle sticks or cuts. Some officials say the actual number of infected workers may be much higher.

Given the millions of surgical procedures performed in this country since the start of the AIDS epidemic, these figures should reassure both doctors and patients. But like everything else about AIDS, there's a big gap between knowledge and emotion. Many of Benson's patients panicked when they received their letters from the doctor. "I was screaming," says 30-year-old Kathy Nesby, a homemaker and mother of three. Benson delivered her daughter Nicole on Oct. 10—after he found out he had AIDS. Although Nesby says his arms and hands were covered with oozing sores, during the next few months Benson performed three well baby checkups on Nicole, looking at her eyes, nose and ears. Without wearing gloves, Nesby says he also spread the lips of Nicole's vagina and put a tongue depressor in her mouth. Although she and Nicole have tested negative for AIDS. Nesby worries about anything that goes wrong with Nicole. "She's had a little diaper rash now for over a month and a half," says Nesby. "It's sure taking a long time to clear up."

Like other patients of Benson, Nesby was particularly disturbed by the weeping lesions on the doctor's arms and hands. Though he claims he wore gloves when necessary, Benson performed rectal, vaginal and throat exams during months when the sores were so severe that one health-care professional who saw them compared them to third-degree burns. KARE TV of Minneapolis last week broadcast a photograph of a doctor identified as Benson delivering an infant last August; the photo appears to show sores on the doctor's bare arm even as his gloved hands extract the baby. Nesby says that when she asked Benson about his skin condition, he told her that it was "an allergic reaction to the sun." Another of Benson's patients, who is suing him and wants to be identified only as "K.A.C." says she can't understand why the doctor put patients at risk. "He takes an oath to save lives," she says, "not give a death sentence."

HIDING THE TRUTH

Neither Benson nor his lawyer would talk to Newsweek about the case. But Duff, Benson's colleague, admits that he hid the truth from patients who asked him if he was sick as he lost weight and grew weaker. He told them, "I'm dealing with a significant illness," he says. Mostly, he was concerned about his sons—now 14, 18 and 20. "My kids are at an age where there's a certain amount of AIDS phobia," Duff says. "I didn't want to cause a major crisis in my life." According to Duff, the clinic staff knew for two years and no one quit. In fact, he says, he asked the staff to tell him if they felt he should stop practicing. "Let me know, and I'll retire right away," he says he told them. "Sometimes you can't see things yourself very well." Now he says he realizes he should have quit earlier. Because of exhaustion, he had already cut his patient load in half. "Maybe this is God's way of saying, 'If you're not going to quit on your own, I'll get you to quit'."

But should someone have intervened sooner? Patients assume that state or federal regulatory agencies are watching over their health care. While this may be true in some parts of the medical system, doctors with AIDS are pretty much on their own. Only one state—New York—has issued enforceable rules for HIV-infected health-care workers. There are no federal regulations covering infected physicians. After months of debate, the CDC is still in the process of drafting guidelines on the issue. This week Rep. William Dannemeyer (Republican of California) is planning to introduce legislation in Congress governing infected health-care workers. Michael Osterholm, Minnesota's state epidemiologist, is the chosen representative of the nation's state epidemiologists to the Centers for Disease Control in its deliberations on new standards. "The lag in the development of federal guidelines is one of public health's worst hours," he says. "If we professionals don't do something proactive, the state legislators and the insurance companies will do it for us."

In Minnesota, state health officials were first notified of the Benson case eight months ago; it took that long to work its way through bureaucratic channels. Officials at the Board of Medical Examiners struggled with the case: they knew of no other situation in which a practicing physician with AIDS had been reported to his state board. Finally, after combing through records, authorities estimated that 328 patients were at greatest risk because of a combination of the timing of the procedures and the presence of the lesions. That number, revised last week to 339, includes 38 mothers and 38 babies.

The American Medical Association and the American Dental Association both recommend that HIV-positive dentists and physicians either refrain from performing invasive procedures or disclose their condition and obtain informed consent from their patients. Dr. Nancy Dickey, an AMA trustee, says professional self-regulation works best because each case presents its own set of problems. Some infected doctors in specialties where they have little direct contact with patients, such as radiology, would be able to work safely as long as they are healthy. Others, particularly surgeons, present greater risks.

Mandatory testing of all health-care workers might seem like a good solution, but some AIDS experts say it's impractical and ineffective. There can be a six-month lag between infection and the development of antibodies that show up on a test. That could

mean that a doctor who cuts himself while operating on an infected patient would have to stop practicing for at least six months until he can be tested. And a clean bill of health could be meaningless just a day after it is issued if the health-care worker becomes infected.

Where would disclosure end? Should a physician with a seizure disorder tell his patient about his condition? What about doctors who are recovering alcoholics or substance abusers? Disclosure is "incredibly murky," says Dori Zaleznik, and epidemiologist at Beth Israel Hospital in Boston. "Do you have to tell the patient you had a fight with your wife this morning and it is affecting your judgment?"

Other physicians think the risks of testing are worth it. "The inherent right to know—for patient and doctor alike—always has to supersede confidentiality," says Dr. Sanford Kuvin, vice chairman of the National Foundation for Infectious Diseases in Washington, D.C. "The doctor doesn't have to put up a signboard, but there has to be informed consent if he is going to do invasive procedures. 'First, do no harm' is the absolute bedrock of medicine. The Kimberly Bergalises of this world are avoidable."

Testing doctors inevitably brings up the issue of patient testing. This week the AMA will meet to debate recommendations that call for routine testing at the discretion of the doctor, accompanied by counseling and informed consent. "Doctors are afraid," says Dr. Paul Rothman, president of Search alliance, and AIDS-research organization in Los Angeles. "They want to know the HIV status of their patients, and doctors who work in surgery ask us about it all the time. If we get the patient's permission, we give the information, otherwise it's up to the surgeon to discover it on his own. In many institutions, blood is illegally and surreptitiously drawn on patients to find out their status."

Historians say AIDS presents unique medical and social dilemmas. In past epidemics, infected doctors were never required to disclose their status to patients, says Sheila Rothman, a medical historian at the Center for the Study of Society and Medicine at Columbia University. Nor were patients expected to tell doctors that they had an infectious disease. "There was silence on both sides," Rothman says. From 1800 to 1870, one out of every five deaths in this country was from tuberculosis. So many doctors got the disease, Rothman says, that by the 1920s it was sometimes referred to as the "occupational disease of physicians." But even then, there was no question of not treating sick patients or of doctors who were ill refraining from practice if they were physically able to work.

Today physicians who willingly disclose their illness can pay a terrible price. Dr. Hacib Aoun's entree into the nightmare world of AIDS came without warning, heralded only by the sharp crack of a breaking test tube and the sight of HIV-contaminated blood dripping over his cut finger. In December 1986, three years after that awful day, the Baltimore cardiologist was diagnosed with full-blown AIDS. Administrators at the hospital where he was training refused to renew his contract. He sued and settled for an undisclosed sum a year later. Aoun has not been able to find a job since. He spends his time traveling around the country lecturing on doctors and AIDS. "Death is going to catch me with my boots on," says Aoun, 36. "I'm not going to sit down and dwindle away. I have a message to pass on." He is bitter that HIV-positive doctors are treated like lepers. "The one thing that I am not doing now is the thing I love most in life and that is taking care of people, because medicine has no place for those who are HIV infected, regardless of your talent."

At this stage in the epidemic, doctors who admit they have AIDS and want to continue to help others have few choices. They can become activists, like Aoun; they can work in noninvasive fields like psychiatry or they can limit their practice to people with AIDS—considered pariahs by many doctors. In one recent study, two thirds of medical residents surveyed said they did not plan to treat people with AIDS and 74 percent of residents said they would not give lifesaving treatment to HIV-positive patients if the risk of infection to the resident were one in 100, according to Molly Cooke, an associate professor of clinical medicine at the University of California, San Francisco, who conducted the study.

Or HIV-positive doctors can continue to practice, keeping their painful secret. That is the choice that Bill (not his real name), a 41-year-old New York doctor, has made. It's been a little more than two years since Bill tested positive for HIV. He is still healthy and is not on medication. He follows the universal precautions to the letter, including hand-washing, gloves and masks. "Do I think there's no situation where HIV could be transmitted?" he asks. "No, there must be. But living in 1991 America puts us at risk for lots of things. You could ride on a subway that catches on fire. You can be involved in a car accident. Being alive involves risk."

Bill says he took the AIDS test when his lover became infected. Since his lover died a year ago, he has been especially grateful for his work. "In grieving," he says. "I've found that work can be a refuge. I'm glad to have it." Bill believes that not only is he not putting patients at risk, but he is serving some who would otherwise get no health care. "I'm talking about clinic patients, patients with tuberculosis, drug abusers, patients who have no access to health care. I'm one of very few in my specialty who don't turn away patients whose consult read 'HIV positive, insurance negative'."

In the absence of federal regulations, HIV-positive doctors must make their decisions the way Bill did—one case at a time. Patients can only guess about the health of their doctors; similarly, doctors must take risks with patients they may consider suspect. And the few for whom the issue is no longer theoretical will try to make some sense out of their tragedy.

Like Kim Bergalis, Barbara Webb was infected by David Acer, her dentist. The 65-year-old retired teacher says she never thought much about AIDS until she saw a story in the local paper about a patient suspected of contracting AIDS from Acer. She and her husband, Bob, also an Acer patient, went in to be tested. Her husband's test was negative; hers wasn't. "It was just like being hit in the solar plexus by a heavyweight boxer," says Webb. "I could hardly breathe. I thought: 'This is impossible'." In the months since, Webb, who is on AZT, has made a fragile peace with her disease, but she's still angry that Acer hid his illness. Earlier this year she needed eye surgery. She told her doctor she was HIV positive and explained that she would not be insulted if he refused to operate on her; he agreed to do the operation. "I would have understood totally and gone down to the AIDS clinic," she says. "And it wouldn't have bothered me at all to go down. I just gave him the option. Nobody gave me the option."

I BLAME EVERY ONE OF YOU BASTARDS

(Kimberly Bergalis, the first patient to contract AIDS from her dentist, wrote this letter to Florida health officials April 6. Last week, as she neared death, her family released it for publication.)

"When I was diagnosed with AIDS in December of '89, I was only 21 years old. It was the shock of my life and my family's as well. I have lived to see my hair fall out, my body lose over 40 pounds, blisters on my sides. I've lived to go through nausea and vomiting, continual night sweats, chronic fevers of 103-104 that don't go away anymore. I have cramping and diarrhea. I now have confusion and forgetfulness. I have lived through the torturous acne that infested my face and neck—brought on by AZT. I have endured trips twice a week to Miami for 3 months only to receive painful IV injections. I've had blood transfusions. I've had a bone marrow biopsy. I cried my heart out from the pain of the biopsy.

"I lived through the fear of whether or not my liver has been completely destroyed by DDI and other drugs. It may very well be. I lived to see white fungus grow all over the inside of my mouth, the back of my throat, my gums, and now my lips. It looks like white fur and it gives you atrocious breath. Isn't that nice? I have tiny blisters on my lips. It may be the first stages of herpes.

"I was infected by Dr. Acer in 1987. My life has been sheer hell except for the good times and closeness with my family and my enjoyment for life and nature. AIDS has slowly destroyed me. Unless a cure is found, I will be another one of your statistics soon.

"Who do I blame? Do I blame myself? I sure don't. I never used IV drugs, never slept with anyone and never had a blood transfusion. I blame Dr. Acer and every single one of you bastards. Anyone that *knew* Dr. Acer was infected and had full-blown AIDS and stood by not doing a damn thing about it. You are all just as guilty as he was. You've ruined my life and my family's. I forgive Dr. Acer because I believe the disease affected his mind. He wasn't able to think properly and he continued to practice.

"Do you know my family will be emotionally scarred by this forever? Do you know my mother lost her mother, father, grandfather and dog in a car accident when she was a teenager—and now she's going to lose her first born child?

"Have you ever awakened in the middle of the night soaking wet from a night sweat—only to have it happen again an hour later. Can you imagine what it's like to realize you're losing weight in your *fingers* and that your body may be using its muscles to try to survive. Or do you know what it's like to look at yourself in a full-length mirror before you shower—and you only see a skeleton? Do you know what I did? I slid to the floor and I cried. Now I shower with a blanket over the mirror.

"Well—I think I've said enough. Like I said—all is forgiven by me—there's no hard feelings anymore. But I will never forget.

"P.S. If laws are not formed to provide protection, then my suffering and death was in vain.

"I'm dying guys. Goodbye."

IN FLORENCE, A MEETING OF MYSTERIES

For the seventh year in a row, thousands of scientists from around the world gathered last week to share their research on a disease that frustrates and fascinates them. Although the International Conference on AIDS in Florence was less politicized than in past years, there were demonstrations over a

U.S. immigration policy that bans anyone carrying the AIDS virus. There were gloomy predictions that by 1995, 15 million people will be infected worldwide. And some studies suggested it's easier to get AIDS through heterosexual intercourse than most people think. But the conference offered good news, too: researchers understand better why some people carrying the virus remain free of symptoms for many years—and new drugs hold out the promise of prolonging lives.

An estimated 8 million to 10 million people are infected with the AIDS virus, says Dr. James Chin, head of the World Health Organization's AIDS surveillance unit; more than half live in sub-Sahara Africa. By 1995, Chin says, newly diagnosed cases will likely plateau in the industrialized world, but transmission will explode in developing nations. During the next couple of decades in the Third World, Chin predicts, "AIDS will become the leading cause of death for adults in their most productive years."

In the developing nations AIDS is spread most often by heterosexual intercourse. Initially researchers believed the virus was harder to transmit by vaginal sex than anal sex, where rectal bleeding gives it direct entry to the bloodstream. But researchers from Harvard University's Dana Farber Cancer Institute reported evidence of what scientists had long suspected: even very small concentrations of the virus can be transmitted directly through mucous membranes. Dr. William Haseltine's team discovered the virus in a type of cell found in the linings of the rectum, vagina and mouth. Although AIDS transmission through deep kissing (with exchange of saliva) is theoretically possible, says Haseltine, "most people in public health think the risk is a small one."

Viruses lurking in mucous membranes, away from the bloodstream, may be more difficult to zap with drugs. But at least one drug, AZT, has lengthened the lives of many people who are HIV positive. Several researchers reported that combining AZT with the experimental drugs known as DDC and DDI substantially increased survival rates.

Physicians have been tantalized by the puzzle of people with longstanding HIV infections who haven't developed symptoms. Dr. Jay Levy of the University of California, San Francisco, discovered that their immune systems naturally produce a substance that temporarily halts replication of the virus. It seems able to fend off the virus' ravages for as long as a decade, says Levy, and could be useful in developing effective drugs.

As the conference ended, there was much apprehension among participants over whether they would meet again in 1992. Many said they won't attend next year's meeting in Boston if the restrictive U.S. immigration policy isn't changed; conference organizers may even cancel it. The U.S. Public Health Service recently recommended eliminating all but active TB from the list of eight infectious diseases that preclude entry to the United States. So far, the Bush administration has rejected that advice. Like many other aspects of AIDS, the outcome of this conflict is still uncertain.

INNOCENT GIRL'S BLOOD ON POLITICIANS' HANDS

(By Ray Kerrison)

In what may have been her last public communication before she dies, Kimberly Bergalis indicted the American public-health service in terms that haunt her soul. Her blood, she said, was on their hands.

You bet it is, Kimberly Bergalis was a beautiful, healthy University of Florida student, as innocent as the sun in the sky, when she contracted AIDS from her dentist, Dr. David Acer. Now, at 23, she's a 70-pound skeleton, bedridden, wracked by pain, burning with fever, begging God to release her from her agony.

She is dying because the political and public-health systems are more interested in protecting the wayward, the deviant and the promiscuous than the upright.

She understands it so clearly that she wrote a letter to a health investigator that should sear the conscience of every politician, doctor and health worker in the country.

"Whom do I blame?" Kimberly wrote. "Do I blame myself? I sure don't. I never used drugs, never slept with anyone and never had a blood transfusion.

"I blame Dr. Acer and every single one of you bastards. Anyone who knew Dr. Acer was infected and had full-blown AIDS and stood by not doing a damn thing about it. You're all just as guilty as he was. You've ruined my life and my family's."

The unforgivable fact of Kimberly's impending death is that it is so unnecessary. She was infected when she had two teeth extracted in December 1987—three months after Dr. Acer, a bisexual, was diagnosed as having AIDS.

She was like a lamb led to the slaughter. The whole political, medical and public-health system of Florida, as they do in so many states, including New York, joined in a conspiracy of silence to shield Dr. Acer's deadly disease and allow hundreds of patients to be exposed to his infection. If this is not cold-blooded, deliberate dereliction of duty on a massive scale, I don't know what is.

After contracting AIDS, Dr. Acer treated 1,700 unsuspecting patients before he died last September. He is believed to have infected four others in addition to Kimberly.

Kimberly concluded her letter, "If laws are not formed to provide protection, then my suffering and death was in vain. I'm dying, guys. Goodbye."

You'd think, Kimberly's plight would trigger universal dismay and anguish. Not in New York. Our state officials studied her tragedy and shrugged it off.

A hundred Kimberly Bergalises could be sacrificed and New York's so-called public-health officials would not be moved. Why? Because they are political and medical cowards.

The nation's leading health groups—the American Medical Association and the American Dental Association—have both taken the unequivocal position that doctors and dentists infected with the AIDS virus should warn their patients or give up surgery.

That's just common sense, but the New York State Health Department trashes it. Its policy is that health-care workers infected with the AIDS virus need not tell patients and certainly they may continue to operate or perform other invasive procedures. The department holds that patients don't have a legal right to know the health status of doctors or dentists given them care.

Dr. David Axelrod, as the state commisioner of health, made this policy in the winter, shortly before he was stricken with a stroke. He claimed the chance of being infected by a doctor or dentist was one in 100,000 or one in a million. He apparently liked those odds. They are not so great if your name is Kimberly Bergalis.

Dr. Axelrod was not alone. Gov. Cuomo, Mayor Dinkins, the city's health commissioners and most politicians have consistently opposed mandatory reporting of the AIDS virus, even though it is the law for all other sexually transmitted diseases such as herpes and syphillis.

Why is AIDS, the deadliest of all such diseases, the lone exception? Because New York's politicians, especially Cuomo and Dinkins and their government departments, are prisoners of the radical homosexual lobby. They place the public's health at risk rather than offend the militants in ACT-UP.

The day may come when New York will have its own Kimberly Bergalis. If it does, watch out. That's when the politicians and health authorities will be held accountable.

The PRESIDING OFFICER. Who yields time?

Mr. DURENBERGER addressed the Chair.

Mr. KENNEDY. Mr. President, I yield whatever time the Senator needs.

Mr. DURENBERGER. Five minutes.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I rise to oppose the amendment offered by my distinguished colleague from North Carolina, which would require mandatory disclosure of HIV status by health professionals.

Mr. President, I also ask unanimous consent that Robert Wood Johnson, intern on my staff, and Susan Bartlett Foote be allowed the privilege of access to the floor.

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

Mr. DURENBERGER. Mr. President, listening to my colleague read this very long last letter from Kimberly says the obvious, and that is that the issue generates a very high level of emotion. And reading it on the floor of the Senate, I am sure, is guaranteed to heighten emotion on this issue.

I must say that as I watched a similar experience in the State of Minnesota over the last 3 weeks, in the videotapes of a doctor in Minnesota delivering a baby. It turns out later the doctor did have AIDS, but every one of his patients has demonstrated they have not been infected. I just must say to my colleagues that we are all being victimized in this country because of this kind of fear. I say victimized.

In Minnesota, an unscrupulous person took out advertisements offering potentially lifesaving information. Here is what the ad said: "See if your doctor or dentist has AIDS." And then there is a phone number you could call. For $22.95, the callers received forms that the attorney general in the State of Minnesota has called shams with false, deceptive, and misleading statements preying on the public's anxiety and fear over AIDS and doctors. That is just one example.

Mr. President, I rise because I believe we need to allay the public's anxiety with facts and with good public policy. Last week, when we began the debate on this amendment, I appealed to my colleagues to look at the facts, and I make that appeal once again. Some

people have said to me this amendment only mandates disclosure. Surely, they argue, disclosure of HIV status is not too much to ask?

Mr. President, we have to look more closely at this amendment, and I submit that it does more harm than good. The risk of transmission of HIV from health care workers to patient is extremely small. Of the 179,316 AIDS cases diagnosed in the United States as of May 31 of this year, one case, the case cited by my colleague from North Carolina, implicates a health care provider. In the context of this epidemic in this country and across the world, that is infinitesimal.

We must remember that millions of invasive procedures have been performed by physicians over the 10 years that HIV has been with us—and one case.

There are no cases of patients who contracted HIV disease from health care workers when those workers followed the universal precautions of infection control. None; zero. So, Mr. President, I recognize that the risk is small, but I must also recognize that it exists. I do not take that lightly. No one should be exposed to the AIDS virus unnecessarily.

However, as a nation and as a people, we must craft policies of infection control that are properly designed to eliminate the real risk, not a phantom risk inflated by fear and ignorance. This is what the amendment before us does. It imposes criminal sanctions on health care workers for failure to disclose their HIV status.

What is the purpose of criminal law? It is to punish wrongdoers and deter others from engaging in similar acts. The vast majority of health care workers accept their moral and professional responsibility to be servants of their patients. They do not need the fear of criminal sanctions to behave responsibility.

My colleague spoke of the one dentist in Florida. And it is clear that there are reckless and irresponsible people likely to intentionally infect their patients. These rare few refuse to take precautions. Their desire to continue practice appears to be driven by fear and denial. Do you think any one of these people who have what is already a fatal disease will be deterred by the threat of a long jail term? Come on. They are already terminal.

Mr. President, this amendment will not deter or punish those who present risk to patients. On the other hand, the broad mandate for disease disclosure in the amendment ignores the right of privacy of the individual health care provider.

Were a patient to reveal to a doctor that they had tested positive, there is no question but what the doctor has to keep that confidence. But if the reverse is the case and the doctor has to tell it to the patient, the patient can go out and tell it to the world. And that is likely what will happen with this amendment.

Mr. President, in addition to the personal costs associated with this amendment, I ask you what about the impact on access to care? Consider a nurse in a rural hospital anywhere in the world who takes every necessary precaution to protect her patients. Because of fear and ignorance, disclosure of HIV status is tantamount to forcing that nurse to withdraw from practice altogether.

Suppose she contracted it from a patient. Her career is over.

Patients will be deprived of health care services that may pose little or no risk to them. That is one of the hidden costs of this amendment.

It is important to remember there are no cases of patients who contracted HIV disease when health care workers followed universal precautions. None. Prevention and precautions eliminate risk. Fines and jail terms do not.

The proposal before us will not deter risky behavior on the part of a reckless few. It will not prevent transmission. It does not further the fight against the AIDS epidemic. And it may unfairly and unnecessarily harm the lives of others.

We need, Mr. President, prevention, not punishment. We need to cure AIDS, not to criminalize it.

The American public is deeply concerned about AIDS; we are all deeply concerned. However, this amendment is a gesture. We should not fool the electorate with policies that just will not work.

As a New York columnist has recently pointed out:

> As always, we yearn for bright lines, for guarantees, for absolutes. People look at photographs of Kimberly Bergalis, baked down to the bones by illness, and see themselves. But bright lines are neither available nor, in the last analysis right.

Mr. President, the amendment before us offers a false guarantee, a bright line that obscures the truth, and it is not in the last analysis, right.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

The Senator from Massachusetts has 22 minutes and 20 seconds.

Mr. KENNEDY. Mr. President, I yield myself 10 minutes.

Mr. President, I heard a few moments ago a very eloquent statement of compassion by the Senator from North Carolina about Kimberly Bergalis and the members of her family, with a reference to others whose lives have been taken as a result of HIV. All of our hearts ache at the extraordinary tragedy.

The issue here on the Senate floor is not who is more concerned about that tragedy, because there is obviously no lock on who cares the deepest, or who is the most concerned among the Members of the Senate. Obviously, all of us are deeply concerned about that extraordinary personal tragedy to Kimberly Bergalis and the other members of her family, and all of our hearts ache about her tragic story.

The issue that is before the Senate is what course should this body take in order that there not be more Kimberly Bergalises. That is basically the issue. We cannot go back and revisit that particular tragedy other than to be saddened by it. The question is, What we are going to do today to avoid that possibility in the future? What steps will this body take to avoid further tragedies of this kind?

We cannot absolutely ensure, through our actions here, that this situation might not occur again sometime in the future. What we must try to do is shape and fashion the soundest public health policy that we can to avoid such circumstances in the future.

This is the critical issue before us. And the question now to be considered by the Senate is whether we believe that the best answer to this would be sending someone to prison for 10 years, which they would be unlikely to outlive, and also imposing a $10,000 fine, or whether we should take the recommendations of the Centers for Disease Control and implement the newly released guidelines. These recommendations of the CDC represent the best thinking of our scientists and the medical profession, which have been studying and reviewing this issue for the last year. This has entailed thousands of pages of paper, days of testimony, and hours of consideration, all given to this one question: What is going to be the best public health policy for this country that will protect our patients and health care professionals. This is what the Centers for Disease Control has considered. They reviewed the option of mandatory testing, and discounted it for particular reasons—however, this does not disallow it as an option for States, should they make that choice. The CDC also considered the potential for criminal proceedings and discarded that approach.

What we have today, Mr. President, is the proposal of the Senator from North Carolina. Maybe there are going to be those here in this body who say, "We are going to vote for that." They will be able to go back home and say, "We have really ensured that the health delivery system today is going to be secure and safe; you face no possibility of contracting HIV or AIDS because we voted for the Jesse Helms amendment." Under his definition of basic procedure anyone who knowingly has HIV and does a procedure is going to jail. Therefore, go ahead to your hospital, your medical center, your

dentist's office—there really is no chance that you'll ever get HIV.

That is nonsense. Maybe people will feel good about such a vote—the we have really been tough on HIV people—voting to put them in jail for 10 years. They can say we have really been tough, we have really solved this public health problem.

Alternatively, you will have the opportunity to vote for an amendment introduced by the majority leader, Senator MITCHELL, the minority leader, Senator DOLE, and cosponsored by my friend and colleague from Utah, Senator HATCH, myself, and others, that basically takes the thoughtful recommendations of the CDC covering a wide variety of different issues. These recommendations are related to the transmission of HIV from a health care worker to a patient, covering issues of disinfecting equipment and other kinds of preventive measures that have been reviewed and examined and found sound. They also looked at various kinds of invasive procedures which they have defined narrowly, carefully, prudently, and effectively. They have instructed the States to take the necessary steps to protect the public in those States, and to develop what the States believe to be the most effective ways of ensuring that protection—which may very well be mandatory testing or criminalization. The States are going to make those judgments; but this amendment provides that States comply with these guidelines or otherwise they lose Federal health resources and funding. Naturally, every State will take those steps.

The Centers for Disease Control, in their examination of the mandatory testing issues, believe that such testing helps drive the disease further underground. What medical professional, if they feel that they may be at risk, is going to take the HIV test when they know that is going to end their career practicing medicine? If they know that they have HIV, and go forward with some invasive procedure, then they go to jail. So if that individual thinks they may or may not have it, what are they going to do? Are they going to go out and get the test? Of course not. They are going to continue to practice medicine and put the patients at further risk.

That is going to be the effect of the amendment of the Senator from North Carolina. What is it going to mean for those individuals in the medical profession that may be involved in invasive procedures and who may feel that they may or may not be contaminated—do you think they will go out and be tested? Of course, they will not. Will you feel that you have really protected your patients by voting for a 10-year jail term? That individual will not be tested, and they will continue to practice. That is what we want to avoid, and what we will avoid, when we adopt the recommendations of the Centers for Disease Control.

Mr. President, if we start examining exactly what the Centers for Disease Control recommendations are as well as the——

Mr. DECONCINI. Will the Senator yield for a question on that subject matter?

Mr. KENNEDY. Sure.

Mr. DECONCINI. I am really interested in that point because, as I read the amendment of the Senator from North Carolina and as I understand the point of the Senator from North Carolina, the fact is the person has to know that he is a virus carrier and, if he does know he is a carrier, to avoid the penalty, he must give notification. If he does not know, then he is not subject to any penalties even though he might transmit the virus to someone else.

Mr. KENNEDY. The Senator is exactly correct.

Mr. DECONCINI. So the point of the Senator from Massachusetts is well intended, as is the amendment of the Senator from North Carolina. I am as concerned as the Senator from Massachusetts that, in fact, if we are going to get anyone who has any reason at all to believe he or she just might be a virus carrier, he or she may be afraid to get tested because once they get tested and it is affirmative, then they have to give notification to their patients or they are going to go to jail. If they have never been tested and they do not know one way or the other if they have the virus, then they are not subject to criminal penalties although they may be transmitting the virus.

Mr. KENNEDY. The Senator has summarized it absolutely accurately.

Mr. DECONCINI. I thank the Senator from Massachusetts for making that point as clear as he did.

Let me ask another question. There is nothing in the Helms amendment that protects the medical care profession. I do not have any figures, but I am under the impression that there are more cases of the AIDS virus being transmitted from patients to doctors than there are from doctors to patients. Maybe someone ought to look at how to protect the medical care profession from patients who are carrying the virus. I do not have an answer on how to do that. But this amendment obviously does not address that problem.

Mr. KENNEDY. The Senator is absolutely correct. We are attempting, even as we are here working with the administration, the Centers for Disease Control, and the Occupational Health and Safety Division within the Labor Department and with the representatives of the various medical professions, to do exactly that. We would have that kind of amendment, I hope, within the next 10 days before the August recess. I talked both to the majority leader and the minority leader. I have not talked personally to Senator HATCH. I am sure he would agree. But I have talked to the others about fashioning and shaping an amendment that will provide, to the extent possible, the medical professionals who, as the Senator has quite rightly pointed out, are at very considerable risk.

Mr. DECONCINI. If the Senator will yield 30 seconds from his time, I wish the Senator from North Carolina were here because when his amendment was first proposed, it was very attractive to me because of the obvious problems with AIDS transmissions as exhibited by the story that was printed in the local newspaper here, but from other cases where someone was careless and did not advise the patient that they were an AIDS carrier.

It seems to me there should be some penalty, but I am afraid this amendment goes too far in trying to do that. I know the Senator from North Carolina is trying to correct the problem. But I believe that as Senator KENNEDY pointed out it is going to be counterproductive. I think, based on that, I am going to support the compromise leadership amendment. I thank the Senator.

Mr. KENNEDY. I thank the Senator for his comments.

The PRESIDING OFFICER. The Chair informs the Senator from Massachusetts he has 10 minutes remaining.

Mr. KENNEDY. I yield myself another 4 minutes.

I would point out to the Senator that the recommendations of CDC place a heavy emphasis on the prevention aspects, disinfection and sterilization processes, and procedures for protection both of the doctor as well as the patient. But then it defines what the Centers for Disease Control, and basically what the medical profession, believe to be invasive procedures; and gives the requirements to the States that they are to fashion and shape, within a year, legislation to ensure that all health care workers would conform to the recommendations of the Centers for Disease Control.

Let me briefly point out some other troublesome aspects of the amendment of the Senator from North Carolina.

If you look at the language of the Senator, it covers any registered physician, dentist, nurse, or other health care professional who provides medical or dental treatment, and defines treatment as performance of any medical diagnosis, or procedure that involves invasive physical contact. Physical contact can mean any touching. Medical diagnosis means a person performing a medical diagnostic test that might not have any direct contact with the patient, such as orderlies, lab technicians, radiologists, or nurses who pose no virtual medical risk to the patient. They will be covered by the amendment and subject to the mandatory 10-year sentence.

If you extrapolate on that, Mr. President, we have 600,000 physicians, 134,000 in a surgical subspecialty, 182,000 in primary care; 150,000 dentists, and 71,000 dental hygienists. Allied health professions add other millions. We have 2 million nurses, 700,000 alone in critical care. This adds up to 4 million health care workers, who could at least be subject to the Helms criminal penalties.

What are we going to expect of the young people today who might be interested in a public health or medical career, when they have this whole issue in question over their heads? Everyone is implicated, and anyone who turns out to be HIV positive and does not tell the patient with whom they may have no personal contact, will automatically go to jail for 10 years. It is a mandatory minimum sentencing. You are saying to those individuals: "Do not ever get tested. Do not even think about getting tested. If you do and you stay in that profession, you are going to be penalized."

Mr. President, I do not think it is plausible that our colleagues vote for both, because they are basically incompatible. The Helms amendment effectively discourages testing, and the Dole-Hatch-Mitchell amendment encourages testing.

If we have learned something about this HIV disease, it is to deal with it from a sound public health point of view. That way, we are going to hopefully limit it, and restrict it. And we will soon, with the research that is being done at NIH, FDA, and in the private sector as well, move to a time when we will effectively eradicate it. And the best way to eradicate this disease includes counseling of those that may be affected and afflicted, and through voluntary testing. In the narrowly defined subset of cases which the Centers for Disease Control has indicated may pose a potential public health danger, we may insist that professionals will refrain from these exposure-prone procedures.

The PRESIDING OFFICER. The Senator from Massachusetts has 5 minutes remaining on his time.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DECONCINI. 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. DECONCINI. Mr. President, I understand that the Senator from Alabama wants the floor for not to exceed 3 minutes, if the Senator from North Carolina does not have any objection.

I ask unanimous consent that the Senator from Alabama be granted 3 minutes time, and that it not be charged against either side of this particular pending amendment.

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

The Senator from Alabama is recognized.

Mr. HEFLIN. I thank the Chair.

(The remarks of Mr. HEFLIN pertaining to the introduction of S. 1494 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

Mr. DECONCINI. Mr. President, under the normal standards the absence of a quorum and the time consumed is to be charged against both sides; is that correct?

The PRESIDING OFFICER. That is not correct.

Mr. DECONCINI. What is the procedure?

The PRESIDING OFFICER. Only the Members who control time can put in a quorum call.

Mr. DECONCINI. If the quorum call is in effect.

The PRESIDING OFFICER. Then you can make the request.

Mr. DECONCINI. Let me get a clarification, Mr. President. If the Member who controls the time asks for a quorum call, then the time is charged against that Member's time; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DECONCINI. If no quorum call is requested, then the time is charged against both sides?

The PRESIDING OFFICER. Equally.

Mr. DECONCINI. Equally?

The PRESIDING OFFICER. The Senator is correct.

Mr. HEFLIN. Does the Senator want me to withdraw the quorum call?

Mr. DECONCINI. Yes.

The PRESIDING OFFICER. The Senator from Massachusetts has 5 minutes remaining; the Senator from North Carolina has 9 minutes, 23 seconds.

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have a letter from Secretary Sullivan stating the administration's position in strong support for the Centers for Disease Control guidelines and ask unanimous consent that it be printed in the RECORD.

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

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, July 18, 1991.

Hon. GEORGE J. MITCHELL,
Senate Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: On July 15, my Department published health care worker guidelines that deal with preventing the transmission of the Human Immunodeficiency Virus (HIV) to patients during exposure-prone invasive procedures.

The guidelines call on all health care workers who perform exposure-prone procedures to find out their HIV and hepatitis B status and to not participate in such procedures unless they have obtained permission and individualized guidance from special review committees which will require, at minimum, that potential patients be informed of the infected worker's status.

The guidelines also emphasize the need for all physicians to carefully follow the "Universal Precautions" against infection, including such actions as thorough sterilization of equipment, careful handling and disposal of needles and other sharp instruments, and the wearing of gloves when appropriated.

I believe it is important to emphasize that patients face no risk of AIDS transmission from the great majority of medical procedures.

I understand the Senate will be considering several proposals dealing with this issue. I strongly believe that the guidelines we have issued, representing the consensus of the health care professions, will best serve the interest of patients and health care workers alike. Therefore, I support the Dole-Hatch-Mitchell-Kennedy-Helms amendment that would codify these standards.

Thank you for your review of this matter.

Sincerely,

LOUIS W. SULLIVAN, M.D.

Mr. KENNEDY. Mr. President, it says, "I strongly believe that the guidelines we have issued, representing the consensus of the health care professions, will best serve the interest of patients and health care workers alike."

The Members will have an opportunity to vote on that particular measure after we dispose of the Helms amendment.

Just briefly, Mr. President, the Helms amendment makes a mockery, a mockery of the Centers for Disease Control recommendations. If we accept that particular amendment patients are going to be at greater risk, not lesser risk, because of the criminality aspects of that amendment.

This has been the conclusion of the Public Health Service experts who have studied, reviewed, and consulted with medical experts all over this country. They have reviewed and studied it for 1 year. They believe that the Helms amendment poses a greater danger to patients in this country. That is why they have so strenuously urged the membership in this body and in the House, and across this country, to adopt what they believe will be the soundest Public Health Service policy that will be included in the leadership amendment.

I urge our colleagues to reject the Helms amendment and support the leadership proposal.

Mr. President, I wish to have printed in the RECORD letters of support for our position by various associations. I have already printed in the RECORD the letter of support by Secretary Sullivan in the administration. These letters are from medical associations in support of

our position as well. I ask unanimous consent that they be printed in the RECORD.

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

AMERICAN HOSPITAL ASSOCIATION,
Washington, DC, July 17, 1991.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: As the Senate begins to examine the issue of transmission of the HIV virus in the health care setting, I wanted to apprise you of the American Hospital Association's (AHA) vigorous opposition to mandatory disclosure of health care workers' HIV status. The AHA is committed to ensuring that the risk of HIV transmission in the health care setting is minimized for patients and health care workers. We are aware of the enormous complexity and difficulty surrounding the issue of HIV transmission in the health care setting and have been working closely with the Centers for Disease Control since the onset of the epidemic to provide sound guidance to our member hospitals.

Management of HIV-infected health care workers has become a highly visible and emotional issue for everyone. The severe prognosis attached to HIV-infection, though improving, yields a natural desire to protect oneself from infection. There is, however, no such thing as a risk-free environment. To be effective, public policy must be reasonably related to what is known about the risk of HIV transmission; it cannot be based on generalizations, irrational fears or misperceptions. And the benefits of any related legislation must be contrasted with the human costs associated with broad, unwarranted, proscriptions.

A number of legislative approaches have been suggested regarding notification of health care workers' HIV status as a means to reduce the risk of transmission in a health care setting. Such approaches include requiring all health care workers to notify all patients of their HIV status, without regard to whether the nature of their contact with patients carries any risk of transmission, and instituting criminal penalties or imprisonment for any HIV infected health care worker who performs an invasive procedure. We believe such approaches are not based on sound public health policy and would jeopardize the delivery of health care services.

The American Hospital Association would argue that such approaches should be rejected for the following reasons:

1. The Centers for Disease Control (CDC) is the government agency responsible for managing the AIDS/HIV epidemic and has the expertise needed to recommend appropriate public policy. CDC's recommendations for preventing Human Immunodeficiency Virus and Hepatitis B Virus transmission during invasive procedures should act as the national guidelines for managing HIV-infected health care workers. CDC's just released guidelines recommend the use of universal precautions and advise that HIV-infected health care workers should refrain from performing exposure-prone procedures, or notify their patients of their HIV status. Furthermore, they recommend against mandatory testing.

The AHA supports these guidelines and recommend that they be considered as the basis for any federal legislation.

2. Mandatory testing of health care workers and disclosure of their HIV status would not significantly contribute to further decreasing the low risk of HIV transmission in the health care setting. The most effective method of minimizing risks of HIV exposure in the health care setting continues to be the rigorous adherence to universal precautions, which require the use of protective barriers (e.g. gloves, gowns, masks) when exposure to blood or other body fluids is anticipated. Several studies have affirmed the effectiveness of universal precautions in preventing exposures by reducing direct contact with blood and body fluids. There is widespread agreement within the health care community that continued emphasis on the use of universal precautions and sound infection control practices are essential in reducing the risk of HIV transmission in the health care setting. Most importantly, following rigorous precautions is the only effective means of guarding against transmission by newly infected individuals who have not yet seroconverted.

3. The current assessment of the risk of HIV transmission from health care workers to patients does not support the diversion of resources that would be required to implement restrictive policies against infected health care workers. Of approximately 9 million employees involved in the health care industry, less than 6,000 have been diagnosed with AIDS, which includes those in non-patient care related activities. Only a fraction of those perform invasive procedures. The cost of testing alone would be enormous (e.g., approximately $65 per worker who tests negative and $250 per worker who tests positive) and would not be justified based on what is known about the number of HIV-infected health care workers and their potential risk to patients. Disclosure of HIV status would mean great expense to the health care industry in retraining and replacing valuable workers unnecessarily excluded from practicing their profession.

4. Penalties and practice restrictions for HIV-infected practitioners who pose no risk to their patients could result in a severe shortage of personnel available to care not only for HIV-infected patients but for all patients living in geographic areas with high HIV prevalence. Such penalties are also likely to have a significant impact on the career choices of health care workers entering the field, who may be less likely to choose specialties which are believed to have the highest risk of exposure to blood, or less likely to work in geographic areas with a high seroprevalence of HIV infection.

5. HIV-infected health care workers who do not perform invasive procedures do not pose a risk of HIV transmission to patients. In the health care setting, the only risk to transmission to the patient is in invasive procedures where there is a high risk of percutaneous injury, or where the likelihood is high of a health care worker's blood coming in contact with the tissues or mucous membranes of a patient. However, even during the small subset of invasive procedures the risk is believed to be extremely remote. CDC has estimated that the risk of HIV seroconversion after an invasive procedure performed by an HIV-positive surgeon is between 2.4 to 24 per million. This is about one-tenth of the risk of anesthesia-associated death. Restricting all HIV-infected health care workers from performing their duties would preclude a nutritionist from giving nutritional advice, a radiologist from reading x-rays, or a nurse from taking a blood pressure.

The AHA's current recommendation is to assess individually each HIV-infected worker's ability to perform his/her job duties, and to consider limiting those duties based on a number of factors, including the type of procedures performed, the clinical stage of the illness, the presence of other clinical indicators (e.g. skin lesions) and the individual's record of compliance with infection control procedures.

We recognize the public's anxiety regarding HIV transmission in the health care setting, and believe that the public anxiety can be tempered by strong governmental leadership based on the scientific knowledge regarding HIV. We urge Congress to reject restrictive proposals and adhere to a rational approach to managing the AIDS epidemic.

Sincerely,

RICHARD J. POLLACK,
Vice President.

AMERICAN COLLEGE OF PHYSICIANS,
Washington, DC., July 17, 1991.

DEAR SENATOR: On behalf of the American College of Physicians (ACP), representing 70,000 physicians in internal medicine and its subspecialties, I am writing to strongly urge you to oppose the amendment to be offered by Senator Helms concerning HIV-infected health care workers.

The Helms amendment would impose criminal penalties on HIV-infected health care workers who perform invasive procedures without first notifying the patient of their status. The language is unclear as to whether the penalties could also apply in other types of medical treatment and diagnosis.

We do not believe that the Helms amendment would have the impact intended, that is to reduce the number of transmissions from health care workers to patients. Strict adherence to universal precautions and careful monitoring of the HIV and hepatitis B status of health care workers as suggested by CDC are much more likely to have a positive influence on reducing the risk of transmission than criminalizing non-disclosure.

After months of careful analysis and consideration of a wide variety of patient and provider concerns, the Centers for Disease Control issued this week to reduce further the already small risk of transmission from providers to patients. The CDC guidelines will strongly influence medical practice in the United States by providing a clear, coherent strategy to reduce HIV transmission. We believe that conflicting legislation at this time will have a seriously detrimental impact on overall efforts to reduce transmission from health care worker to patient.

Unlike the Helms amendment that does not even define invasive procedures, the CDC guidelines make an important distinction between invasive procedures and "exposure-prone" procedures. Using data on transmission of Hepatitis BV to patients, which is more easily transmitted than HIV, the CDC has identified certain dental and surgical procedures that should be considered exposure-prone. Since transmission can "theoretically" occur in these instances even with adherence to universal precautions, CDC is recommending that HIV-infected health care workers not perform these procedures. This is a very cautious approach, placing the safety of the patient first, and at the same time, does not unnecessarily restrict the practice of qualified health care providers.

The College strongly opposes the Helms amendment just when CDC has come out with guidelines that will have a significant

impact on policies and practices at the state and local levels.

Sincerely yours,

H. DENMAN SCOTT, MD, FACP,
Associate Executive Vice President.

SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL–CIO,
Washington, DC, July 16, 1991.

DEAR SENATOR: On behalf of the 950,000 members of the Service Employees International Union who work in the public sector, health care, and building service industries, I urge you to vote against the Helms Amendment imposing criminal penalties on HIV-infected healthcare workers.

SEIU believes that criminal sanctions will not increase compliance with the "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures" issued by the Centers for Disease Control on July 12, 1991. We agree with CDC that "Compliance by healthcare workers with recommendations can be increased through education, training, and appropriate confidentiality safeguards."

SEIU has been active in the national response to the AIDS epidemic ever since the early eighties when our members sought protection against occupational exposure to this deadly disease. SEIU's position has always been that strict adherence to universal precautions is the best way to provide maximum safety to patients and workers alike. SEIU recommends immediate enactment of the draft OSHA Bloodborne Disease Standard which would give universal precautions the force of law.

I am confident that the U.S. Senate will not respond to the massive public concern about HIV-infected healthcare workers with ill-considered measures that will weaken our nation's ability to battle the AIDS epidemic over the long haul. I urge you to vote against the Helms amendment.

Sincerely,

JOHN J. SWEENEY,
International President.

AMERICAN ASSOCIATION OF
NURSE ANESTHETISTS,
Park Ridge, IL, July 8, 1991.

Hon. EDWARD M. KENNEDY,
Chairman, Senate Committee on Labor and Human Resources, Washington, DC.

DEAR SENATOR KENNEDY: As President of the American Association of Nurse Anesthetists (AANA), I am writing to request that Congress refrain from action on any legislative proposals which would require mandatory disclosure of health care workers' HIV status. As you may know, AANA represents more than 24,000 certified registered nurse anesthetists (CRNs) nationwide.

CRNAs, like all health care professionals, are extremely concerned that every appropriate precaution be taken to insure that both patients and health care workers are protected from transmission of the HIV. In fact, AANA is currently in the process of developing guidelines for HIV/AID prevention and management for CRNAs.

Currently, within health care settings, general infection control procedures have been developed and accepted as a means to minimize the risk of patient acquisition of infection from contact with contaminated materials and devices and of transmission of an infectious agent from health care workers to patients. Such procedures also protect workers from the risk of becoming infected.

Presently, the AANA strongly recommends that all CRNAs adhere rigorously to the principles of universal precautions. Furthermore, we believe that all health care facilities should regularly review health care professionals' adherence to barrier techniques, establish protocols to protect patients from HIV infected health care workers, and set forth disciplinary procedures for failure to practice universal precautions.

Mandatory testing or mandatory disclosure of the HIV, however, does nothing to guarantee the prevention of HIV transmission. Rather, mandatory testing is cost prohibitive, creates monitoring difficulties, and may lend a false sense of security which has been shown to lessen adherence to universal precautions.

AANA believes it would be inappropriate for Congress to impose mandatory testing or disclosure at this time. Traditionally, states have addressed public health issues such as reporting. Moreover, the Center for Disease Control (CDC) will be issuing guidelines in the very near future. AANA strongly encourages Congress to refrain from acting on testing or disclosure legislation pending the release of the CDC guidelines.

We also strongly encourage the creation of a national commission to examine the impact of HIV/AIDS on the health care delivery system as a whole. It is imperative that we explore the ramifications of HIV infection on our ability to recruit and retain health care professionals. Additionally, we must understand and address the potentially negative effects of testing on health care providers with respect to malpractice, disability, and other insurance protections.

We welcome the opportunity to discuss these issues in greater detail with you or your staff. If you have any questions, please feel free to contact the AANA Federal Government Affairs Director, Kathy Michels, at (202) 682–1267.

Sincerely,

DAVID R. FLETCHER, CRNA, MA,
President.

COUNCIL OF STATE AND
TERRITORIAL EPIDEMIOLOGISTS,
Portland, OR, July 5, 1991.

Hon. EDWARD M. KENNEDY,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: I understand that the Senate may soon be considering an amendment to S. 1241 which would force states seeking federal funding for health programs to require health care workers who know they are infected with HIV to disclose that information to their patients.

As president of the Council of State and Territorial Epidemiologists (CSTE), I request that you oppose this amendment. My reasons for this request include:

1. There is no risk of HIV transmission from most health care providers to their patients. Even for health care workers who perform invasive procedures such as surgery, this risk is extremely small.

2. State laws requiring health care providers who know they are HIV-infected to notify their patients may actually increase the small risk of transmission to patients. Under such laws, a health care worker can avoid losing his or her livelihood simply by not being tested and by remaining ignorant of his or her HIV infection. This is perhaps the most dangerous scenario—an HIV-infected surgeon who is ignorant of his or her infection, who has not sought advice for protecting patients, and who is not practicing routine infection control precautions with special attention.

3. Solving the problem raised in item 2 by requiring periodic testing of health care providers would be far too costly relative to the minuscule risk such a measure would address.

I strongly believe that an approach which seeks the voluntary cooperation of an HIV-infected health care worker for protecting patients is much more likely to be effective than the proposed mandatory approach. An example of such a voluntary approach as used in Oregon is described in the attached "CD Summary".

Thank you for considering my request. If I, or other members of CSTE can provide additional information to help you as you consider this complicated issue, please let me know.

Sincerely,

LAURENCE R. FOSTER, M.D., M.P.H.,
President.

AMERICAN DENTAL ASSOCIATION,
Washington, DC, July 17, 1991.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources, Washington, DC.

DEAR SENATOR KENNEDY: I am writing to express the strong opposition of the American Dental Association to amendment, No. 734, concerning HIV-infected health care providers which has been offered by Senator Helms to H.R. 2622, the pending Treasury, Postal Service and General Government Appropriations Act of 1992.

First and foremost, the Association supports the July 12, 1991 guidelines of the Centers for Disease Control and has provided significant input to the CDC this year regarding the relative risk of endemic transmission of bloodborne pathogens from health care worker to patient. The new CDC guidelines are consistent with ADA's own policy statement on HIV-infected dentists, which provides that HIV-infected dentists should refrain from performing invasive procedures or disclose their HIV status.

Overall, we believe that the complex public health issues of when and under what circumstances HIV-infected health care workers should disclose their status to patients should be decided by public health agencies, like CDC, working in cooperation with the appropriate state agencies, the affected professions, the employer and in each case the infected health care worker. The CDC guidelines should provide a great degree of comfort to Congress that the issues are being addressed appropriately by the agencies that have the expertise to address them.

The new CDC guidelines state that "investigations of HIV and HBV transmission from HCWs to patients indicate that, when HCWs adhere to recommended infection-control procedures, the risk of transmitting HBV from an infected HCW to patient is small, and the risk of transmitting HIV is likely to be even smaller." The guidelines also address a new classification of procedures identified as "exposure-prone." The CDC recommends that HIV-infected health care workers who want to perform exposure-prone procedures first be evaluated by a review panel of experts who represent a balanced perspective, including the individual's own physician, an infectious disease specialist, a professional with expertise in the procedures performed by the health care worker and public health officials. Subsequent to the review, the review panel is to advise the health care worker as to recommended restrictions.

The CDC guidelines further provide that "currently available data provide no basis for recommendations to restrict the practice of HCWs infected with HIV or HBV who perform invasive procedures not identified as

exposure-prone, provided that infected HCWs practice recommended surgical or dental technique and comply with universal precautions and current recommendations for sterilization/disinfection."

The proposed Helms amendment fails to include any of these provisions. Instead, it would require all health care workers to disclose their serostatus to patients, regardless of whether they are performing "exposure-prone" precedures or procedures that pose no risk of transmission of HIV.

We also believe the Helms proposal fails to take into consideration the very serious confidentiality issues surrounding a health care worker's disclosure of his or her HIV status. While we firmly believe that public policy issues take precedence over an individual's own privacy rights, we are concerned that the overbroad Helms proposal fails to give any consideration to the confidentiality of a health care worker's HIV status under any circumstances. We believe the CDC guidelines properly balance public policy issues with the importance of maintaining confidentiality.

Finally, we fear that legislation of this nature will spur thousands of frivolous lawsuits by patients who are not infected with HIV but fear becoming infected. The CDC guidelines explain that only one health care worker in the ten year history of this disease has transmitted HIV to any patients. Look back studies have been conducted of other HIV-infected health care workers, including two general surgeons, a surgical resident, and a dental student and there have been no other instances of transmission. Already, litigation has been filed by patients who have been tested and do not have HIV. Adoption of the Helms amendment, we fear, would encourage a rash of unnecessary litigation of this nature.

If Congress truly believes that this subject needs to be addressed beyond the new CDC guidelines, the review process should begin with the health subcommittees of the Senate and the House of Representatives, where appropriate hearings would be held and input received from all interested parties.

Thank you for your consideration of our comments.

Sincerely,

THOMAS J. GINLEY, Ph.D.,
Executive Director.

THE ORGANIZATION FOR OBSTETRIC, GYNECOLOGIC, & NEONATAL NURSES,
Washington, DC, July 10, 1991.

Hon. EDWARD KENNEDY,
U.S. Senate, Russell Office Building, Washington, DC.

DEAR SENATOR KENNEDY: NAACOG, the professional specialty association representing more than 26,000 obstetric, gynecologic, and neonatal nurses, and health-care professionals, would like to take this opportunity to provide comments regarding S. 1241. An amendment that may be offered to S. 1241 would require States receiving assistance under any Federal health grant program to enact a law mandating health professionals and others infected with human inmunodeficiency virus (HIV) to disclose such information.

NAACOG is opposed to the concepts of mandatory HIV testing and mandatory disclosure regarding HIV status for the following reasons:

Given the limitations of currently available methods of HIV testing, negative test results may be a source of false reassurance to health-care professionals and health-care consumers. Data indicate that an as yet undetermined length of time exists in which testing for the presence of HIV antibodies remains negative although infection is present and communicable.

Limited data are available that identify types of procedures and the corresponding risk of transmission from HIV infected health-care workers to patients as well as from HIV infected patients to health-care professionals. More research is needed regarding the transmission of blood-borne diseases in health-care settings and during the performance of invasive procedures.

NAACOG supports:

Voluntary HIV testing with appropriate counseling, maintenance of confidentiality, and freedom from discrimination based on HIV status.

Acceptance of professional responsibility by the HIV infected health-care worker and personal responsibility by the health-care consumer to voluntarily disclose such status.

The development of policies and guidelines that address transmission of HIV in health-care settings based on epidemiologic data from research on the transmission of blood-borne diseases and invasive procedures and sound infection control practice.

Compliance with universal precautions whenever exposure to blood and body fluids may occur.

Assessment of practice limitations of HIV infected health-care professionals on a case-by-case basis that adheres to standards set by the Americans With Disabilities Act.

The incidence of HIV positive women and newborns is increasing. NAACOG supports legislative efforts that facilitate research intended to evaluate various aspects of HIV including prognostic characteristics, optimal treatment modalities, and prevention techniques. If NAACOG can provide further assistance, please contact Ann Chen, RN, BSN, JD, Health Policy Analyst, Department of Practice and Legislation, (202) 863-2468.

Sincerely,

ANN L. ROPP, RN, MS,
President.

JULY, 1991.

U.S. Senate,
Washington, DC.

DEAR SENATOR: I am writing on behalf of the Association of State and Territorial Health Officials (ASTHO), which represents the chief health officers in the 50 States, the District of Columbia, and the U.S. Territories, to express strong opposition to the Helms amendment criminalizing non-disclosure of health care worker HIV status.

State health officials recognize the potential for transmission from patient to health care worker and health care worker to patient as a complex and challenging problem which warrants the considerable attention it is currently receiving. ASTHO has approached this problem by developing and adhering to a set of principles stressing proper infection control procedures, voluntary testing, and establishment of confidential review panels to assist in the evaluation of workers who are HIV infected.

Alternatively, approaches such as that offered by Senator Helms which criminalize non-disclosure, will actually serve to deter and discourage health care workers from seeking testing or treatment for HIV infection; and most certainy from disclosure of their HIV status to patients. Threat of such penalties will be particularly serious for health care providers serving high HIV prevalence areas, and will likely have the unintended consequence of severely jeopardizing access to care for those individuals most in need of HIV prevention and treatment services.

For these reasons, it is ASTHO's position that resolution of this problem lies not in criminalization, but in sound policies emphasizing infection control, training and futher research on the risks of transmission.

Sincerely,

JOHN C. LEWIN, M.D.,
President.

THE UNITED STATES CONFERENCE OF MAYORS,
Washington, DC, July 8, 1991.

Hon. EDWARD M. KENNEDY,
U.S. Senator, Washington, DC.

DEAR SENATOR KENNEDY: On behalf of the nation's mayors, I would like to express our concern regarding possible amendments requiring disclosure of HIV status. It is our understanding that Senators Robert Dole and Orrin Hatch may soon be offering amendments to S. 1241 or another vehicle which would (1) require health professionals who have knowledge that they are infected with the HIV virus to notify patients of their status, and (2) require disclosure of knowingly infected HIV patients to their health care providers. The United States Conference of Mayors believes both of these amendments would be unwise public policy. We urge your assistance in assuring they are not adopted.

As you know, there is and will continue to be debate on the issues surrounding infected health care workers, a debate which has occurred within The United States Conference of Mayors, as well as within other governmental bodies and the public at large. After much discussion, most recently at our Annual Conference last month, our membership believes it is important to make public policy on AIDS based upon scientific evidence, as often the issues surrounding HIV are so emotionally charged as to lead to unsound policy. A debate should continue, but it should be one in which the actual risk of infection to patients is assessed along with an analysis of the benefits—if any—gained from requiring health professionals to notify patients of their HIV status.

The Centers for Disease Control has issued universal precautions for the protection of health care workers and others who may come into contact with HIV infected blood. Such guidelines makes clear that, for their own best protection, health care workers should treat each patient as though he or she is infected. Establishment of disclosure laws may only serve to give a false sense of protection to health care workers in those cases where patients do not disclose, either because they do not know of their infection or they choose not to inform the health professional despite the disclosure law. To ensure safety, the health professional will still have to treat everyone as though he or she is infected, using the established universal precautions.

Currently, the Centers for Disease Control is revising HIV guidelines regarding invasive procedures. This is an appropriate area for concern and the appropriate arena to develop policy regarding medical protocol and procedures, given the scientific knowledge of transmission of the AIDS virus through infected blood.

The language contained in the proposed amendment would require disclosure for all knowingly HIV infected health professionals who provide treatment consisting of "any medical diagnosis or procedure that involves physical contact between the patient being treated and the physician or health profes-

sional administering the procedure." Such language strongly implies that HIV can be transmitted casually and could only result in yet another round of AIDS hysteria if states are to be forced to enact such laws.

A third area of concern for the Conference of Mayors is the manner in which states are coerced into adopting disclosure laws by holding hostage all federal health funds received by the state. The United States Conference of Mayors believe this coercement to be an infringement on states' rights. Beyond this, it is uniquely unfair to the citizens of the individual states to withhold funds needed for the public health until such time as state legislatures can "rubber stamp" legislation which they may not believe is in the best interest of their citizenary.

For these reasons, The United States Conference of Mayors is opposed to the amendments proposed by Senators Dole and Hatch regarding HIV disclosure. We urge your support in ensuring that public policy on such matters not be made hastily in the heat of emotion. If you or your staff should have any questions regarding our position on this or any other health-related matters, please do not hesitate to contact Richard D. Johnson of my staff at (202) 293-7330.

Thank you for your consideration.

Sincerely,

J. THOMAS COCHRAN,
Executive Director.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts has 3 minutes remaining. The Senator from North Carolina has 9 minutes 23 seconds.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum, with the time to be equally divided.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. How much time do I have?

The PRESIDING OFFICER. The Senator from Massachusetts has 2 minutes.

Mr. KENNEDY. Mr. President, I yield myself the remaining time.

Mr. President, I do not want to conclude this presentation without mentioning my extraordinary apprehension for health care workers in this country. The basic reason why they become health care professionals is to service their fellow human beings.

In this long history of the Public Health Service we have never effectively indicted a whole class of individuals, which we would be doing with the Helms amendment. Even in all the times when we had the communicable diseases we never really effectively defined a whole class of health care workers.

We have individual responsibilities but we never really applied this kind of criminal kinds of process procedures for any class of individuals, particulary in the health care area, and I think it would be an enormous disservice to the millions of health care workers who devote their lives to the well-being of our fellow citizens.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator's time has expired.

Who yields time? The Senator from North Carolina.

Mr. HELMS. Mr. President, as I understand it the time on the other side has expired. Is that correct?

The PRESIDING OFFICER. The time in control of the Senator from Massachusetts has expired. The Senator from North Carolina has control of 8 minutes and 7 seconds.

Mr. HELMS. Mr. President, I yield such time as I may require. There are going to be four votes. First on the Helms pornography amendment, then on the Helms AIDS amendment, and then on the Dole AIDS amendment, which in fact is cosponsored in this order by the majority leader, Mr. MITCHELL, the Republican leader, Mr. DOLE, Mr. HATCH, Mr. HELMS, and somewhere down the line Senator KENNEDY. In other words, I became a cosponsor of the Mitchell-Dole-Hatch-Helms amendment early on because they complement each other. They are not in contradiction of each other at all. And Senators should vote for both of the amendments. The fourth vote will be on final passage of the bill.

Now then, I can always tell when I hit a nerve with the distinguished Senator from Massachusetts. He begins to hollering such words as "nonsense", and he resorts to quote facts out of thin air.

I am going to identify in the RECORD, at this point, where the Senator's speech originated because I received the same letter from the American Civil Liberties Union that he did. I shall put that letter in the RECORD at this point so that readers of the CONGRESSIONAL RECORD can compare what the Senator said in his speech a few minutes ago with what the American Civil Liberties Union said in its letter.

I ask unanimous consent to print that letter in the RECORD.

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

AMERICAN CIVIL LIBERTIES UNION,
Washington, July 17, 1991.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: on behalf of the American Civil Liberties Union (ACLU), we write to urge you to oppose the Helms Amendment, No. 734, to the Treasury-Postal Appropriations bill. The Amendment, scheduled for a vote on Thursday, July 18, would impose criminal penalties on health care workers who, knowing that they are infected with HIV provide treatment without notifying their patients of their infection. The Helms Amendment not only violates civil liberties, it is a terribly counterproductive public health measure.

The Helms Amendment should be defeated for, among many others, the following reasons:

(1) *The Helms Amendment is a dangerously misguided attempt to protect patients because criminal penalties will only exacerbate—not diminish—the risk of transmission of HIV.* The Helms Amendment criminalizes only those who know they have HIV and thus it discourages health care workers from seeking voluntary HIV testing. This completely contradicts the recent recommendations of the Centers for Disease Control (CDC). If the intent of the amendment is to protect against transmission of HIV in the health care setting, the most effective approach is to focus on the implementation of universal precautions, not on the HIV status of the health care provider. This is the course recommended by public health experts such as Dr. David E. Rogers, the Co-Chair of Congress's own National Commission on AIDS, in the attached editorial from the New York Times.

(2) *The Helms Amendment is also a counterproductive public health measure because it preempts the role of the public health, scientific, and medical communities in regulating the professional conduct of health care providers.* In fact, the CDC, the American Medical Association (AMA), and the American Nurses Association (ANA), have each recently issued guidelines that address these issues. The Helms Amendment would effectively transfer control of public health and hospital employment policy from these professional experts to local criminal prosecutors.

(3) *The Helms Amendment is unconstitutionally overbroad.* The Amendment would send physicians to prison for no less than ten years for performing a broad array of procedures that pose absolutely no risk whatsoever to patients. The amendment applies to "any medical diagnosis or procedure that involves invasive physical contact between the patient being treated and the physician or health professional administering the procedure." The CDC, AMA, and ANA have adopted guidelines that more specifically address those procedures that are considered to be higher risk or "exposure-prone". With respect to all other procedures, the CDC explicitly states that "[c]urrently available data provide no basis for recommendations to restrict the practice of [health care workers] infected with HIV . . . who perform invasive procedures not identified as exposure-prone, provided the infested HCWs practice recommended surgical or dental technique and comply with universal precautions and current recommendations for sterilization/infection." Clearly, the Helms Amendment criminalizes activities that public health officials believe to be risk free.

(4) *The Helms Amendment unconstitutionally selects for criminalization one minuscule risk among the many proven risks to patients in the health care setting.* The risk of HIV transmission from a doctor is the "least significant of many risks to patients posed by physicians . . . Hepatitis, for example, is more prevalent, more infectious, and in some cases, just as deadly as AIDS. Some estimates have put the number of physicians impaired by drug and alcohol use, lack of training or other physical conditions as high as 10 percent." (Washington Post, 5/27/91). Between 150,000 and 300,000 people are injured or die every year in United States hospitals due to physician negligence or incompetence. Thus, the Helms Amendment does not address the risks facing hospital patients.

For the above stated reasons, we urge you to vote against the Helms Amendment.

Please feel free to call if you have any questions.

Sincerely,

WILLIAM B. RUBENSTEIN,
Director, ACLU AIDS Project.
JANLORI GOLDMAN,
ACLU Legislative Counsel.

Mr. HELMS. Mr. President, I think I may care more about medical workers than probably any other Senator in this body. My daughter, Nancy Helms Stuart, is a registered nurse. She is in charge of one area of responsibility at Rex Hospital in Raleigh. She on a number of occasions has been put at risk by AIDS patients.

So do not give me this nonsense, if I may borrow one of the favorite words of the Senator from Massachusetts, about not being interested in health workers. And I might add a question: Just who is chairman of the Senate committee with the responsibility to come up with legislation on the AIDS problem? I am not on the Senate Labor and Human Resources Committee; but if any Senator is inclined to suggest that perhaps that committee, chaired by the distinguished Senator from Massachusetts, ought to get to work on some of the things the Senator has been saying, I second the motion.

Rhetoric is fine. What the Senator obviously does not want to do is to agitate the homosexual lobby and the American Civil Liberties Union. For my part, I don't care whether I agitate either of those crowds.

Now it has been said many times in the press and otherwise, and I agree—I wish the Labor and Human Resources Committee of the Senate, which has the duty and the authority would get to work on that, instead of trying to defend people who have AIDS because of their lifestyle. I pray that they will get to work on it—I agree that the thousands of medical workers who are at risk from patients who are infected with AIDS deserve to have some protection. I agree 100 percent or, as George McGovern said once, 1,000 percent.

I am the father, as I have said of a registered nurse. She is very dear to me. I worry about her. I want my daughter protected. I want every health care worker protected. But we must not have a Senate committee that sits on its posterior and talks. That is why I have for 6 years attempted to call attention to the callous disregard for public safety and common sense which has been exhibited by the AIDS lobby and its allies in the Senate.

I give health workers across this country, including my daughter in Raleigh, NC, my pledge that I will continue to do everything I can to ensure that they, along with all other Americans, will no longer fall victim to the political agenda of the AIDS activists.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 3 minutes and 13 seconds remaining.

Mr. HELMS. I yield the remainder of my time to my distinguished friend from Utah, Mr. HATCH.

Mr. HATCH. I thank the distinguished Senator from North Carolina.

Mr. President, the amendment offered by Senator HELMS recognizes the severity of the risk which health care providers, who are HIV-positive, impose upon their patients. The Helms amendment would apply to those health professionals who:

First, know they are HIV-positive;

Second, who perform invasive procedures; and

Third, who do not inform their patients.

Such health care professionals, as rare as they may be, are guilty of intentionally inflicting harm. They are intentionally exposing their patient to the risk of death. Death. There is no cure. It could have been prevented. That kind of behavior deserves, indeed requires, criminal sanctions.

We know of over 6,000 health care professionals who are HIV-positive in this country. Those are the ones we know about. We do not know how many continue to perform invasive procedures. We do not know how many have disclosed their HIV status to their patients. We can only pray that many patients have not been unwittingly infected.

Senator HELMS has described the tragedy of Kimberly Bergalis. She got AIDS from her dentist. She is dying! We should never let that happen again.

Senator HELMS has also described the despicable behavior of the Minnesota obstetrician who knew he was HIV-positive. He continued to deliver babies with open sores on his arms. Are criminal penalties inappropriate under such circumstances? They are appropriate and you and I know it.

Senator KENNEDY suggests HIV-positive physicians can do no harm to their patients. There are already 5 documented cases—and who knows how many are not yet identified—of health professional transmission.

The harm is not theoretical. It is real. It is fatal. And it is something we all have to be concerned about.

When an individual in our society knowingly, intentionally, and without forethought, visits harm on another individual, we require criminal sanctions.

Senator HELMS requires that health professionals are not exempted from our traditional societal expectations. In that regard, he is absolutely correct.

Senator KENNEDY has argued that the CDC guidelines are the "best science" and the "best public policy." I agree. And, let me make one thing clear. I do not believe that the Helms amendment is inconsistent. And I have gone over that time and time again, worrying about whether I am doing right.

The CDC guidelines say that if a health care professional performs an exposure-prone—or invasive—procedure, and the health care professional has AIDS, then the patient has a right to know.

That, my colleagues, is consistent with the Helms amendment. Except, the amendment puts teeth by enforcing these recommendations.

So I am going to vote for the Helms amendment. And I have to say that without him having raised this amendment, the CDC guidelines would not have been as strong as they are, and I happen to know that personally. I have to tell you I want to pay a personal tribute to him for having done so. It is not just him coming out here and doing this. He really believes in what he is doing. I have to say the amendment is not inconsistent with the amendment we will file later known as the Dole-Hatch-Mitchell-Kennedy amendment.

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

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

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

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. HELMS. Very well.

The PRESIDING OFFICER. All time has expired on amendment No. 734.

The Republican leader is recognized.

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

The PRESIDING OFFICER. The absence of a quorum having been suggested, 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.

AMENDMENT NO. 781

(Purpose: To require States to adopt the recommendations of the Centers for Disease Control concerning the transmission of the HIV virus by health care professionals to patients)

Mr. DOLE. Mr. President, on behalf of myself; the distinguished majority leader, Senator MITCHELL; the distinguished Senator from North Carolina [Mr. HELMS]; the distinguished Senator from Massachusetts [Mr. KENNEDY]; and the distinguished Senator from Utah [Mr. HATCH], 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 Kansas [Mr. DOLE], for himself, Mr. MITCHELL, Mr. HELMS, Mr. KENNEDY, and Mr. HATCH, proposes an amendment numbered 781.

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:

At the appropriate place, insert the following new section:

SEC. . (a) Notwithstanding any other provision of law, a State shall, not later than 1 year after the date of enactment of this act, certify to the Secretary that such State has in effect regulations, or has enacted legislation, to adopt the guidelines issued by the Centers for Disease Control concerning recommendations for preventing the transmission, by health care professionals, of the human immunodeficiency virus and the hepatitis B virus to patients during exposure prone invasive procedures. Such regulations or legislation shall apply to health professionals practicing within the State and shall be consistent with Centers for Disease Control guidelines and Federal law. Failure to comply with such guidelines, except in emergency situations when the patient's life is in danger, by a health care professional shall be considered as the basis for disciplinary action by the appropriate State licensing agent.

(b) Except as provided in subsection (c), if a State does not provide the certification required under subsection (a) within the 1-year period described in such subsection, such State shall be ineligible to receive assistance under the Public Health Service Act (42 U.S.C. 301 et seq.) until such certification is provided.

(c) The Secretary of Health and Human Services shall extend the time period described in subsection (a) for a State, if—

(1) the State has determined not to promulgate regulations to adopt the guidelines referred to in subsection (a); and

(2) the State legislature of such State meets on a biennial basis and has not met within the 1-year period beginning on the date of enactment of this Act.

Mr. DOLE. Mr. President, I think we have had most of the debate on the various amendments. I want to thank my colleagues.

In fact, Mr. President, I ask unanimous consent to have printed in the RECORD a letter signed by myself, Senator MITCHELL, Senator KENNEDY, and Senator HATCH with reference to this particular amendment.

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

U.S. SENATE,
July 17, 1991.

DEAR COLLEAGUE: On Monday, July 15, 1991, the Centers for Disease Control published guidelines on "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures".

These guidelines represent a consensus on this issue among scientists and public health professionals as the best way to protect the health of the American public while maintaining an adequate system of health services.

During debate on the Senate floor on July 11, an amendment was offered addressing this topic, but consideration of the amendment was postponed until this week, so that the CDC guidelines could be issued and Senators would have the opportunity to review them.

After reviewing these guidelines, we are in agreement that they provide the most effective means of providing genuine protection for patients against the possibility that they could be infected with the Human Immunodeficiency Virus (HIV) virus or the Hepatitis B virus (HBV) transmitted from their physician, dentist or other health care worker.

We therefore will jointly offer an amendment on July 18 that will require states to adopt these guidelines by regulation or legislation.

This amendment respects the scientific judgment of Federal public health officials and the traditional right of the states to determine their own public health regulations. We enclose copies of the CDC guidelines and our amendment, and we urge you to vote for this amendment as the Senate's position on this complex but extremely important issue of health policy.

Sincerely,

GEORGE J. MITCHELL.
EDWARD M. KENNEDY.
BOB DOLE.
ORRIN G. HATCH.

Mr. DOLE. Also I have a comparison of this amendment, the pending amendment, and the Helms amendment, and I ask unanimous consent that it be printed in the RECORD.

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

Helms amendment	CDC guidelines
	Universal precautions.
	Health care workers who do exposure prone (EP's) invasive procedures (IP's) should know HIV status.
If positive, they must:	If positive, they should/must:
	Not do EP's/IP's or
Notify patients before doing IP's	Consult with expert panel on under what circumstances, if any, they may do EP/IP's and notify patients before doing EP/IP's.
Penalties: $10,000 with 10 yr	Dole/Hatch amendment: Requires states to implement guidelines and tie to licensure. Enforces the requirement by cutting off PHS funds if failure to comply.

Mr. DOLE. And I ask unanimous consent that a letter from the Secretary of HHS supporting this amendment be printed in the RECORD.

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

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, July 18, 1991.

Hon. GEORGE J. MITCHELL,
Senate Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: On July 15, my Department published health care worker guidelines that deal with preventing the transmission of the Human Immunodeficiency Virus (HIV) to patients during exposure-prone invasion procedures.

The guidelines call on all health care workers who perform exposure-prone procedures to find out their HIV and hepatitis B status and to not participate in such procedures unless they have obtained permission and individualized guidance from special review committees which will require, at minimum, that potential patients be informed of the infected worker's status.

The guidelines also emphasize the need for all physicians to carefully follow the "Universal Precautions" against infection, including such actions as thorough sterilization of equipment, careful handling and disposal of needles and other sharp instruments, and the wearing of gloves when appropriate.

I believe it is important to emphasize that patients face no risk of AIDS transmission from the great majority of medical procedures.

I understand the Senate will be considering several proposals dealing with this issue. I strongly believe that the guidelines we have issued, representing the consensus of the health care professions, will best serve the interest of patients and health care workers alike. Therefore, I support the Dole-Hatch-Mitchell-Kennedy-Helms amendment that would codify these standards.

Thank you for your review of this matter.

Sincerely,

LOUIS W. SULLIVAN, M.D.

Mr. DOLE. Mr. President, last week, my distinguished colleague from North Carolina, Senator HELMS, laid before the Senate an amendment related to disclosure by health professionals if they perform certain procedures and are HIV positive. Senator HELMS asked us to confront a very difficult issue that many of our constituents are concerned about.

Recent press stories about transmission of the HIV virus by health professionals had led to a great deal of fear on the part of many—some of which is justified, some of which is not. It is our hope that this consensus amendment, which is based on much of the work done by Senator HELMS, helps to relieve some of that fear.

The Centers for Disease Control has been working for a long period of time to develop recommendations based on the latest scientific information. As we all know only too well, there is far more unknown than known about this dreaded disease, although our knowledge is growing. It was their goal and ours to guide and protect our citizens without frightening them needlessly, nor creating an unrealistic expectation of safety. I believe the guidelines do just that, and it is for that reason that we base our amendment on the implementation of those recommendations.

There is clearly a risk, though small, of transmission between a health care worker and a patient. The recommendations provide that every effort be made to identify those procedures creating the greatest risk and direct that they either not be done by those who are infected, or be done under limited circumstances with the patient's full knowledge. If a health

professional fails to follow these sensible guidelines there is no doubt in my mind that they should be disciplined by the State licensing agency. These agencies are accustomed to dealing with such matters.

Mr. President, having reached consensus on this matter which is designed to help protect patients, we must now turn our attention to protection of our health care workers. The universal precautions called for by CDC are designed to provide protection for all and should be the basis upon which our efforts are built.

Over the next few days, this Senator will be working with the Senator from Massachusetts and the rest of our colleagues and the Department of Labor to see if we can not bring to closure the consideration of regulations dealing with workplace protections. Again, our goal should be to protect not only those who are cared for, but also those who provide the caring.

Again, my thanks for the extraordinary efforts of all of my colleagues in this area. It is a very sensitive area. It is very controversial. But I must say if you watched, as I did, the TV program about this young lady from Florida, it is also a real problem. It may be only a few now, but it could spread. I think we have an obligation to make certain that we keep any expansion to a minimum.

So I commend all of my colleagues. I hope this consensus amendment will be supported by every one of the Senators present today. It is the approach we have taken; it is the one recommended. As far as I know, it has widespread support. It is not partisan in any sense.

This is a very sensitive area and I thank my colleagues for their attention.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the minority leader has referenced workplace standards. I would like to, if I could, engage him in a brief colloquy on this issue.

How much time do we have on this amendment? We have an hour, is that right?

The PRESIDING OFFICER. The Senator from Massachusetts controls 29 minutes and 33 seconds; the Senator from Kansas, 25 minutes and 51 seconds.

Mr. KENNEDY. I yield myself such time as I might use.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, everyone agrees that strict adherence by health care workers to universal precautions against bloodborne infection is the best way to protect both patients and workers against HIV—the virus that causes AIDS.

For 5 years, the Department of Labor has been working on regulations that would make employers supply the equipment and training needed for universal precautions. They have held extensive hearings and completed an exhaustive record. It is my understanding that the work on this standard has been completed but for some reason the Department has continually missed its own deadlines for issuing a final standard.

The OSHA bloodborne disease standard would not only provide the most effective means for guarding against infection, it also would establish uniform national standards and activate an already existing enforcement mechanism. If this regulation were law, then OSHA inspectors could immediately begin inspecting the offices of dentists and physicians and other facilities to make sure universal precautions are strictly adhered to.

Mr. DOLE. Mr. President, if the Senator will yield, I agree with the distinguished Senator from Massachusetts, Senator KENNEDY, that clearly precautions are necessary to guarantee maximum protection for patients as well as workers. At this point the urgency of this matter supports prompt implementation—and I underscore the word prompt—of the OSHA universal precaution regulations.

We should work together to move forward these efforts to put these regulations into effect. I will be working with my colleagues at the Department of Labor to make certain this happens at the earliest possible time.

Mr. KENNEDY. I thank the Republican leader. I look forward to working with the Senator, the majority leader, and my colleague Senator HATCH as well, to implement those regulations at the earliest possible time.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, I yield 5 minutes to the Senator from Utah.

Mr. President, following 5 minutes to Senator HATCH, I yield another 15 minutes on an unrelated matter to the Senator from Missouri, Senator DANFORTH, out of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am pleased to cosponsor the minority leader's amendment. It would require States to adopt strategies for implementation of the Centers for Disease Control guidelines to prevent the transmission of HIV by health care workers.

I appreciate the work of Dr. Bill Roper, who is head of CDC; Dr. Jim Mason, who is, of course, the assistant secretary for health; and last, but certainly not least, the Secretary of Health and Human Services, Secretary Sullivan, for putting out these important guidelines that will protect patients in a manner which is fair to our health care practitioners who have responded admirably to our AIDS epidemic.

Specifically, these guidelines encourage health care workers to adopt certain universal health care precautions to protect patients and workers from the possible spread of the HIV virus. In addition, these guidelines require health care workers who test positive for HIV to either refrain from performing exposure-prone procedures or notify prospective patients before performing such procedures.

Although these are only guidelines, Senators DOLE, MITCHELL, KENNEDY, and I are anxious to ensure these recommendations are adopted. There are now many examples, too many, of patients being infected with HIV virus by health care professionals who knew they were HIV positive.

We know of over 6,000 health professionals, including 700 physicians and at least 1,350 nurses, who are infected. We do not know how many of them have voluntarily informed their patients of their HIV status. We can only pray that more patients have not been unwittingly infected.

The American people support health care professionals disclosing this information to their patients. Over 90 percent of our citizens support mandatory disclosure by nurses, physicians, and dentists who are infected with HIV.

I believe, as CDC does, that the disclosure must occur when procedures are performed which put the patient at risk of exposure.

I join Senators DOLE, MITCHELL, and KENNEDY in supporting an amendment to enforce these guidelines. This amendment will require each State, as a condition of receipt of Federal Public Health Service funds, to adopt these guidelines in their State licensing laws or regulations. We give the States time to adopt them. We will thereby protect our citizens and our health care professional community while we continue our pursuit of prevention or treatment of HIV infection.

In that regard, I want to pay particular tribute to my friend from Massachusetts for the work that he has done on three major AIDS research bills that have come before Congress. No one has worked harder or done more to try to resolve this very dreaded disease, this very dreaded virus. I have to say that if we do ultimately arrive at some sort of a panacea or a cure for HIV, it is going to be in large measure because of what the distinguished Senator from Massachusetts and others have done. I admire and respect that.

So I urge my colleagues to join us and the CDC by supporting this amendment. I think it is a fine amendment. It will help to settle these problems and will do it in a humane, decent, and dignified way.

With that, Mr. President, I yield back the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

49-059 O—95 Vol. 137 (Pt. 13) 32

CLARENCE THOMAS AND NATURAL LAW

Mr. DANFORTH. Mr. President, opponents of the Clarence Thomas nomination have taken his views of natural law out of context in an effort to portray the judge's position as turning the clock back on constitutional interpretation. In particular, they have extracted a single sentence from a single, lengthy speech, and they have transformed that sentence into what it was never intended to be: A sweeping statement of jurisprudence, foretelling his opinion of Roe versus Wade and other issues. They have created a straw man that never existed, and dramatically knocked it down.

What Clarence Thomas has said about natural law has been almost always in the context of civil rights. This was certainly the case in his speech to the Heritage Foundation from which his often quoted reference to Lewis Lehrman was extracted. Mr. President, I ask unanimous consent that a copy of the Heritage Foundation speech be printed in the RECORD.

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

WHY BLACK AMERICANS SHOULD LOOK TO CONSERVATIVE POLICIES

(By Clarence Thomas)

Much has been said about blacks and conservatism. Those on the Left smugly assume blacks are monolithic and will by force of circumstances always huddle to the left of the political spectrum. The political Right watches this herd mentality in action, concedes that blacks are monolithic, picks up a few dissidents, and wistfully shrugs at the seemingly unbreakable hold of the liberal Left on black Americans. But even in the face of this, a few dissidents like Tom Sowell and J.A. Parker stand steadfast, refusing to give in to the cult mentality and childish obedience that hypnotize black Americans into a mindless, political trance. I admire them, and only wish I could have a fraction of their courage and strength.

Many pundits have come along in recent years, who claim an understanding of why so many blacks think right and vote left. They offer "the answer" to the problem of blacks failing to respond favorably to conservatism. I, for one, am not certain there is such a thing as "the answer." And, even if there is, I assure you I do not have it.

I have only my experiences and modest observations to offer. First, I may be somewhat of an oddity. I grew up under state-enforced segregation, which is as close to totalitarianism as I would like to get. My household, notwithstanding the myth fabricated by experts, was strong, stable, and conservative. In fact, it was far more conservative than many who fashion themselves conservatives today. God was central. School, discipline, hard work, and knowing right from wrong were of the highest priority. Crime, welfare, slothfulness, and alcohol were enemies. But these were not issues to be debated by keen intellectuals, bellowed about by rousing orators, or dissected by pollsters and researchers. They were a way of life; they marked the path of survival and the escape route from squalor.

FAMILY POLICY, NOT SOCIAL POLICY

Unlike today, we debated no one about our way of life—we lived it. I must add that my grandparents enforced the no-debate rule. There were a number of concerns I wanted to express. In fact, I did on a number of occasions at a great price. But then, I have always found a way to get in my two cents.

Of course, I thought my grandparents were too rigid and their expectations were too high. I also thought they were mean at times. But one of their often stated goals was to raise us so that we could "do for ourselves," so that we could stand on our "own two feet." This was not their social policy, it was their family policy—for their family, not those nameless families that politicians love to whine about. The most compassionate thing they did for us was to teach us to fend for ourselves and to do that in an openly hostile environment. In fact, the hostility made learning the lesson that much more urgent. It made the difference between freedom and incarceration; life and death; alcoholism and sobriety. The evidence of those who failed abounded, and casualties lay everywhere. But there were also many examples of success—all of whom, according to my grandfather, followed the straight and narrow path. I was raised to survive under the totalitarianism of segregation, not only without the active assistance of government but with its active opposition. We were raised to survive in spite of the dark oppressive cloud of governmentally sanctioned bigotry. Self-sufficiency and spiritual and emotional security were our tools to carve out and secure freedom. Those who attempt to capture the daily counseling, oversight, common sense, and vision of my grandparents in a governmental program are engaging in sheer folly. Government cannot develop individual responsibility, but it certainly can refrain from preventing or hindering the development of this responsibility.

NO PRESCRIPTION FOR SUCCESS

I am of the view that black Americans will move inexorably and naturally toward conservatism when we stop discouraging them; when they are treated as a diverse group with differing interests; and when conservatives stand up for what they believe in rather than stand against blacks. This is not a prescription for success, but rather an assertion that black Americans know what they want, and it is not timidity and condescension. Nor do I believe gadget ideas such as enterprise zones are of any consequence when blacks who live in blighted areas know that crime, not lack of tax credits, is the problem. Blacks are not stupid. And no matter how good an idea or proposal is, no one is going to give up the comfort of the leftist status quo as long as they view conservatives as antagonistic to their interest, and conservatives do little or nothing to dispel the perception. If blacks hate or fear conservatives, nothing we say will be heard. Let me relate my experience as a designated black/conservative/Republican/Reagan appointee in the civil rights area—our soft underbelly as far as our opponents are concerned.

I begin by noting that there was much that many of us who have been in this Administration since the beginning could and should have done. This is at least as true for me as for anyone else. For example, I believe firmly that I should have taken a more aggressive stand against opponents of free enterprise and opponents of the values that are central to success in this society. For me, even more important, I should have been more aggressive in arguing my points with fellow members of the Administration and with those who shared my political and ideological bent. With that said, let us take a look at my perception of the past six years.

HIGH HOPES

In 1980 when Ronald Reagan was elected, I was a staffer for Senator John Danforth of Missouri. After the election, Thomas Sowell called to invite me to a conference in San Francisco, later named the Fairmont Conference. It was his hope, and certainly mine, that this conference would be the beginning of an alternative group—an alternative to the consistently leftist thinking of the civil rights and the black leadership. To my knowledge, it was not intended that this group be an antagonist to anyone, but rather that it bring pluralism to the thinking and to the leadership of black Americans. At the conference at the Fairmont Hotel in San Francisco, there was much fanfare, considerable media coverage, and high hopes. In retrospect, however, the composition of the conference, the attendees, and their various motives for being there should have been an indication of the problems we would encounter in providing alternative thinking in our society. Some of us went because we felt strongly that black Americans were being fed a steady diet of wrong ideas, wrong thinking, and certainly nothing approaching pluralism. There were some others, however, who appeared there solely to gain strategic political position(s) in the new Administration. This would be the undoing of a great idea. But even so, hopes were high, expectations and spirits were high, and morale was high. For those of us who had wandered in the desert of political and ideological alienation, we had found a home, we had found each other. For me, this was also the beginning of public exposure that would change my life and raise my blood pressure—and anxiety level. After returning from San Francisco, the Washington Post printed a major op-ed article about me and my views at the Fairmont Conference. Essentially, the article listed my opposition to busing and affirmative action as well as my concerns about welfare. The resulting outcry was consistently negative.

CASTIGATED AND RIDICULED

Many black Republicans with whom I had enjoyed a working and amicable relationship on Capitol Hill were now distant, and some were even hostile. Letters to the Editor castigated and ridiculed me. I was invited to a panel presentation by one organization, "Black Women's Agenda," and scolded by none other than then Congressman Harold Washington of Chicago. Although initially shocked by the treatment I received, my spirits were not dampened. I was quite enthusiastic about the prospects of black Americans with different ideas receiving exposure. It was in this spirit in 1981 that I joined the Administration as an Assistant Secretary in the Department of Education. I had, initially, declined taking the position of Assistant Secretary for Civil Rights simply because my career was not in civil rights and I had no intention of moving into this area. In fact, I was insulted by the initial contact about the position as well as my current position. But policies affecting black Americans had been an all-consuming interest of mine since the age of 16.

I always found it curious that, even though that my background was in energy, taxation, and general corporate regulatory matters, I was not seriously sought after to move into one of those areas. But be that as it may, I was excited about the prospects of influenc-

ing change. The early enthusiasm was incredible. We had strategy meetings among blacks who were interested in approaching the problems of minorities in our society in a different way—among blacks who saw the mistakes of the past and who were willing to admit error and redirect their energies in a positive way. There was also considerable interest (among some white organizations) in black Americans who thought differently. But, by and large, it was an opportunity to be excited about the prospects of the future—to be excited about the possibilities of changing the course of history and altering the direction of social and civil rights policies in this country. Of course, for much of the media and for many organizations, we were mere curiosities. One person asked rhetorically, "Why do we need blacks thinking like whites?" I saw the prospects of proselytizing many young blacks who, like myself, had been disenchanted with the Left; disenchanted with the so-called black leaders; and discouraged by the inability to effect change or in any way influence the thinking of black leaders in the Democratic Party.

HONEYMOON OVER

But all good things must come to an end. During my first year in the Administration, it was clear that the honeymoon was over. The emphasis in the area of civil rights and social policies was decidedly negative. In the civil rights arena, we began to argue consistently against affirmative action. We attacked welfare and the welfare mentality. These are positions with which I agree. But, the emphasis was unnecessarily negative. It had been my hope and continues to be my hope that we would espouse principles and policies which by their sheer force would preempt welfare and race-conscious policies.

The winds were not taken out of our sails, however, until early 1982 when we changed positions in the Supreme Court to support a tax exemption for Bob Jones University which had been previously challenged because of certain racial policies. Although the point being made in the argument that the administrative and regulatory arm of government should not make policies through regulations was a valid point, it was lost in the overall perception that the racial policies of Bob Jones University were being defended. In addition, the perception that the Administration did not support an extension of the Voting Rights Act aggravated our problems.

I was intrigued by several events that surrounded both the Bob Jones decision and the handling of the Voting Rights Act. As you probably remember, the decision to change positions in the Bob Jones University was made public on Friday afternoon simultaneously with the AT&T breakup. On the following Monday, I expressed grave concerns in a previously scheduled meeting that this would be the undoing of those of us in the Administration who had hoped for an opportunity to expand the thinking of and about black Americans. A fellow member of the Administration said rather glibly that, in two days, the furor over Bob Jones would end. I responded that we had sounded our death knell with that decision. Unfortunately, I was more right than he was.

With respect to the Voting Rights Act, I always found it intriguing that we consistently claimed credit for extending it. Indeed, the President did sign it. Indeed, the President did support the extension of the Voting Rights Act. But by failing to get out early and positively in front of the effort to extend the Act, we allowed ourselves to be put in the position of opposing a version of the Voting Rights Act that was unacceptable, and hence we allowed the perception to be created that this Administration opposed the Voting Rights Act, not simply a version of it.

MY FRIEND ATTACKED

Needless to say, the harangues to which we were subjected privately, publicly, and in all sorts of forums were considerable after these two policy decisions. There was no place that any of us who were identified as black conservatives, black Republicans, or black members of the Administration could go without being virtually attacked and certainly challenged with respect to those two issues specifically and the Administration generally. I remember a very good friend of mine complaining to me that he had been attacked simply for being my friend. Apparently the attack was so intense he simply left the event he was attending. They also made his date leave.

If that were not enough, there was the appearance within the conservative ranks that blacks were to be tolerated but not necessarily welcomed. There appeared to be a presumption, albeit rebuttable, that blacks could not be conservative. Interestingly, this was the flip side of the liberal assumption that we consistently challenged: that blacks were characteristically leftist in their thinking. As such, there was the constant pressure and apparent expectation that even blacks who were in the Administration and considered conservative publicly had to prove themselves daily. Hence, in challenging either positions or the emphases on policy matters, one had to be careful not to go so far as to lose his conservative credentials—or so it seemed. Certainly, pluralism or different points of view on the merits of these issues was not encouraged or invited—especially from blacks. And, if advice was given, it was often ignored. Dissent bore a price—one I gladly paid. Unfortunately, I would have to characterize the general attitude of conservatives toward black conservatives as indifference—with minor exceptions. It was made clear more than once that, since blacks did not vote right, they were owed nothing. This was exacerbated by the mood that the electoral mandate required a certain exclusivity of membership in the conservative ranks. That is, if you were not with us in 1976, do not bother to apply.

For blacks the litmus test was fairly clear. You must be against affirmative action and against welfare. And your opposition had to be adamant and constant or you would be suspected of being a closet liberal. Again, this must be viewed in the context that the presumption was that no black could be a conservative.

CARICATURES AND SIDESHOWS

Needless to say, in this environment little or no effort was made to proselytize those blacks who were on the fence or who had not made up their minds about the conservative movement. In fact, it was already hard enough for those of us who were convinced and converted to survive. And, our treatment certainly offered no encouragement to prospective converts. It often seemed that to be accepted within the conservative ranks and to be treated with some degree of acceptance, a black was required to become a caricature of sorts, providing sideshows of anti-black quips and attacks. But there was more—much more—to our concerns than merely attacking previous policies and so-called black leaders. The future, not the past, was to be influenced.

It is not surprising, with these attitudes, that there was a general refusal to listen to the opinions of black conservatives. In fact, it appeared often that our white counterparts actually hid from our advice. There was a general sense that we were being avoided and circumvented. Those of us who had been indentified as black conservatives were in a rather odd position. This caused me to reflect on my college years. The liberals, or more accurately, those on the Left spent a great deal of time, energy, and effort recruiting and proselytizing blacks by playing on the ill treatment of black Americans in this country. They would devise all sorts of programs and protests in which we should participate. But having observed and having concluded that these programs and protests were not ours and that they were not in the best interest of black Americans, there was no place to go. There was no effort by conservatives to recruit the same black students. It seemed that those with whom we agreed ideologically were not interested and those with whom we did not agree ideologically persistently wooed us. I, for one, had the nagging suspicion that our black counterparts on the Left knew this all along and just sat by and waited to see what we would do and how we would respond. They also knew that they could seal off the credibility with black Americans by misstating our views on civil rights and by fanning the flames of fear among blacks. That is precisely what they did.

ASSURING ALIENATION

I failed to realize just how deep-seated the animosity of blacks toward black conservatives was. The dual labels of black Republicans and black conservatives drew rave reviews. Unfortunately the raving was at us, not for us. The reaction was negative, to be euphemistic, and generally hostile. Interestingly enough, however, our ideas themselves received very positive reactions, especially among the average working-class and middle-class black American who had no vested or proprietary interest in the social policies that had dominated the political scene for the past 20 years. In fact, I was often amazed with the degree of acceptance. But as soon as Republican or conservative was injected into the conversation, there was a complete about face. The ideas were okay. The Republicans and conservatives, especially the black ones, were not.

Our black counterparts on the Left and in the Democratic Party assured our alienation. Those of us who were identified as conservative were ignored at best. We were treated with disdain, regularly castigated, and mocked; and of course we could be accused of anything without recourse and with impunity. I find it intriguing that there has been a recent chorus of pleas by many of the same people who castigated us, for open-mindedness toward those black Democrats who have been accused of illegalities or improprieties. This open-mindedness was certainly not available when it came to accusing and attacking black conservatives, who merely had different ideas about what was good for black Americans and themselves.

IDEOLOGICAL LITANY

The flames were further fanned by the media. I often felt that the media assumed that, to be black, one had to espouse leftist ideas and Democratic politics. Any black who deviated from the ideological litany of requisites was an oddity and was to be cut from the herd and attacked. Hence, any disagreement we had with black Democrats or those on the left was exaggerated. Our char-

acter and motives were impugned and challenged by the same reporters who supposedly were writing objective stories. In fact, on numerous occasions, I have found myself debating and arguing with a reporter, who had long since closed his notebook, put away his pen, and turned off his tape recorder. I remember one instance when I first arrived at the Department of Education, a reporter, who happened to be white, came to my office and asked: "What are you all doing to cut back on civil rights enforcement?" I said, "Nothing! In fact, here is a list of all the things we are doing to enforce the law properly and not just play numbers games." He then asked, "You had a very rough life, didn't you?" To this, I responded that I did not; that I did indeed come from very modest circumstances but that I had lived the American dream; and that I was attempting to secure this dream for all Americans, especially those Americans of my race who had been left out of the American dream. Needless to say, he wrote nothing. I have not always been so fortunate.

BURYING POSITIVE NEWS

There was, indeed, in my view, a complicity and penchant on the part of the media to disseminate indiscriminately whatever negative news there was about black conservatives and ignore or bury the positive news. It is ironic that six years ago, when we preached self-help, we were attacked *ad infinitem*. Now it is common among the black Democrats to act as though they have suddenly discovered our historical roots and that self-help is an integral part of our roots. We now have permission to talk about self-help. The media were also recklessly irresponsible in printing unsubstantiated allegations that portrayed us as anti-black and anti-civil rights.

Unfortunately, it must have been apparent to the black liberals and those on the Left that conservatives would not mount a positive (and I underscore positive) civil rights campaign. They were confident that our central civil rights concern would give them an easy victory since it was confined to affirmative action—that is being against affirmative action. They were certain that we would not be champions of civil rights or would not project ourselves as champions of civil rights. Therefore, they had license to roam unfettered in this area claiming that we were against all that was good and just and holy, and that we were hell bent on returning blacks to slavery. They could smirk at us black conservatives because they felt we had no real political or economic support. And, they would simply wait for us to self-destruct or disappear, bringing to an end the flirtation of blacks with conservatism.

Interestingly enough, I had been told within the first month of going to the Department of Education in 1981 that we would be attacked on civil rights and that we would not be allowed to succeed. It was as though there was a conspiracy between opposing ideologies to deny political and ideological choices to black Americans. For their part, the Left exacted the payment of a very high price for any black who decided to venture from the fold. And among conservatives, the message was that there is no room at the inn. And if there is, only under very strict conditions.

CONSERVATIVES MUST OPEN THE DOOR

It appears that we are welcomed by those who dangled the lure of the wrong approach and we are discouraged by those who, in my view, have the right approach. But conservatives must open the door and lay out the welcome mat if there is ever going to be a chance of attracting black Americans. There need be no ideological concessions, just a major attitudinal change. Conservatives must show that they care. By caring I do not suggest or mean the phony caring and tear-jerking compassion being bandied about today. I for one, do not see how the government can be compassionate, only people can be compassionate and then only with their own money, their own property, or their own effort, not that of others. Conservatives must understand that it is not enough just to be right.

But what is done is done. Let's be blunt. Why should conservatives care about the number of blacks in the Party? After all, it can be argued that the resources expended to attract black votes could be spent wooing other ethnic groups or other voters to vote Republican.

I cannot resist adding in passing that the RNC, which pays itself hefty bonuses, to blow opportunities can scarcely claim lack of resources.

SEARCH FOR STANDARDS

I believe the question of why black Americans should look toward conservative policies is best addressed as part of the general question, why any American should look toward conservative policies. Conservatism's problem and the problem of the post-Reagan Republican Party, the natural vehicle for conservatism, is making conservatism more attractive to Americans in general. In fact, our approach to blacks has been a paradigm of the Republican Party as a whole. The failure to assert principles—to say what we are "for"—plagued the 1986 campaign. Everyone was treated as part of an interest group.

Blacks just happened to represent an interest group not worth going after. Polls rather than principles appeared to control. We must offer a vision, not vexation. But any vision must impart more than a warm feeling that "everything is just fine—keep thinking the same." We must start by articulating principles of government and standards of goodness. I suggest that we begin the search for standards and principles with the self-evident truths of the Declaration of Independence.

Now that even Time magazine has decided to turn ethics into a cover story, there is at least some recognition that a connection exists between natural law standards and constitutional government. Abraham Lincoln made the connection between ethics and politics in his great pre-Civil War speeches. Lincoln was not only talking about the immediate issue of the spread of slavery but also about the whole problem of self-government, of men ruling others by their consent—and the government of oneself. Thus, almost 130 years ago Lincoln felt compelled to correct the erroneous reading set out in the Dred Scott decision:

"They [the Founding Fathers] did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the right so that the enforcement of it might follow as fact as circumstances should permit. They meant to set up a standard maxim for free society, which should be familiar to all and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and therefore constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere."

REEXAMINING NATURAL LAW

We must attempt to recover the moral horizons of these speeches. Equality of rights, not of possessions or entitlements, offered the opportunity to be free, and self-governing.

The need to reexamine the natural law is as current as last month's issue of Time on ethics. Yet it is more venerable than St. Thomas Aquinas. It both transcends and underlies time and place, race and custom. And until recently, it has been an integral part of the American political tradition. Martin Luther King was the last prominent American political figure to appeal to it. But Heritage Foundation Trustee Lewis Lehrman's recent essay in The American Spectator on the Declaration of Independence and the meaning of the right to life is a splendid example of applying natural law.

Briefly put, the thesis of natural law is that human nature provides the key to how men ought to live their lives. As John Quincy Adams put it:

"Our political way of life is by the laws of nature of nature's God, and of course presupposes the existence of God, the moral ruler of the universe, and a rule of right and wrong, of just and unjust, binding upon man, preceding all institutions of human society and of government."

Without such a notion of natural law, the entire American political tradition, from Washington to Lincoln, from Jefferson to Martin Luther King, would be unintelligible. According to our higher law tradition, men must acknowledge each other's freedom, and govern only by the consent of others. All our political institutions presuppose this truth. Natural law of this form is indispensable to decent politics. It is the barrier against the "abolition of man" that C.S. Lewis warned about in his short modern classic.

This approach allows us to reassert the primacy of the individual, and establishes our inherent equality as a God-given right. This inherent equality is the basis for aggressive enforcement of civil rights laws and equal employment opportunity laws designed to protect individual rights. Indeed, defending the individual under these laws should be the hallmark of conservatism rather than its Achilles' Heel. And in no way should this be the issue of those who are antagonistic to individual rights and the proponents of a bigger more intrusive government. Indeed, conservatives should be as adamant about freedom here at home as we are about freedom abroad. We should be at least as incensed about the totalitarianism of drug traffickers and criminals in poor neighborhoods as we are about totalitarianism in Eastern bloc countries. The primacy of individual rights demands that conservatives be the first to protect them.

RESPONSIBILITIES OF FREEDOM

But with the benefits of freedom come responsibilities. Conservatives should be no more timid about asserting the responsibilities of the individual than they should be about protecting individual rights.

This principled approach would, in my view, make it clear to blacks that conservatives are not hostile to their interests but aggressively supportive. This is particularly true to the extent that conservatives are now perceived as anti-civil rights. Unless it is clear that conservative principles protect all individuals, including blacks, there are no programs or arguments, no matter how brilliant, sensible, or logical, that will attract blacks to the conservative ranks. They may take the idea and run, but they will not stay and fraternize without a clear, prin-

cipled message that they are welcome and well protected.

Mr. DANFORTH. Mr. President, no one who takes the time to read this lengthy speech could conceivably conclude that it is a speech about abortion, or about Roe versus Wade, or about when life begins. That is, quite frankly, a ludicrous interpretation of the speech. No straight-faced first-year law student would make such a suggestion.

But, to lay the question completely at rest, I asked Judge Thomas what he intended to say. I asked him whether he intended to apply natural law theory to abortion, or to comment on Roe versus Wade, or to express some theory on the beginning of life. His answer was absolutely no. There was no such intention in his remarks. Judge Thomas assured me that he has not prejudged any case that might come before the Supreme Court, and that he has formulated no views on the relationship between natural law and abortion.

The single sentence from which so much has been made was, in fact, a throwaway line. It was a good word about Lewis Lehrman, uttered in a place known as the Lehrman Auditorium to an organization where Lewis Lehrman is a trustee. It is the kind of compliment uttered by Members of the Senate every day, and to make it into a full-blown jurisprudence is not unlike turning a reference to "my distinguished colleague" into a full-fledged endorsement of everything your colleague has ever said.

The speech at the Heritage Foundation is not about abortion. It is about race. It is about the experience of being a black conservative. Especially, it is a chastisement of white conservatives for their negative position on civil rights. Clarence Thomas went to a conservative audience and told them that a strong position on civil rights was both necessary to win black voters and consistent with conservative philosophy. And in making that argument, he referred, as he has often done, to the concept of natural law embodied in the Declaration of Independence.

Natural law, as it has been expounded by Clarence Thomas in several speeches and law review articles, has been related almost entirely to the principle of equality found in the Declaration of Independence. Thomas believes that this principle of equality, which antedates the Constitution, must inform our understanding of what the Constitution means.

The heart of the Thomas argument is in the lines of the Declaration memorized by every school child:

> We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness.

Thomas believes that the "self-evident" truth of equality underpins the Constitution and must inform constitutional interpretation.

Clarence Thomas, a black man who has felt the sting of segregation and the legacy of slavery, has spent a great deal of time wondering how a nation founded on the principle that all men are created equal could have countenanced the existence of slavery and segregation.

As he stated in a 1987 speech honoring Martin Luther King's birthday, the Declaration of Independence "does not say all white men, but it says all men, which includes black men. It does not say all Gentiles, but it says all men, which included Jews. It does not say all Protestants, but it says all men, which includes Catholics." This is an issue of fundamental concern to a man who lived in a segregated regime "until the beginning of [his adult] life." Mr. President, I ask unanimous consent that a copy of this speech be printed in the RECORD.

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

THE CALLING OF THE HIGHER LAW

ADDRESS BY THE HONORABLE CLARENCE THOMAS, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ON THE OCCASION OF THE MARTIN LUTHER KING, JR., HOLIDAY DELIVERED AT THE U.S. DEPARTMENT OF JUSTICE, JANUARY 16, 1987

Let me begin by noting the date, which I will paraphrase in the last words of the original Constitution, since this is the year of its Bicentennial. We meet today, January 16, in the Year of our Lord, one thousand nine hundred and eighty-seven and of the Independence of the United States of America the two hundredth and eleventh. I mark the date in this way, for the holiday we celebrate brings out the peculiar tie between these two great documents of our political tradition.

The controversy surrounding the Martin Luther King, Jr., holiday can be something positive if it makes us think about why we should honor him. Our most important national holiday is of course the Fourth of July, but that appears to have become "shorn of its vitality and practical value" as a President as long ago as Abraham Lincoln feared it would be. I hope that the following comments might be worthy not only of the man we celebrate today but might make some contribution toward a more vital, valuable, and thoughtful celebration of the Fourth, and of the Bicentennial of the Constitution in general.

As Americans, we can be partisan on many different issues, but, as Americans, we must be non-partisan and in fundamental agreement on certain others. Holidays including such a one as this should be occasions on which we can see what we have in common with each other, rather than dwell on what divides us. Appropriately, Dr. King's greatest speeches were those associated with another controversial figure who also brought about for us unity on the highest basis—Abraham Lincoln. Let us reflect for a moment on Dr. King's speech at Lincoln University and of course on his Lincoln Memorial speech, on the occasion of the great march on Washington.

It is here that Dr. King's confidence in America shines forth the strongest. He was at his best when he emphasized that the civil rights movement would succeed only if it made use of the strengths of American society, only if it brought out what was best about America, and made America live up to what was highest in it. To denounce America as corrupt, or sick, or wicked, was to cast away the greatest resource the civil rights movement and its successors have—the innate justice of the Constitution and the fundamental decency of the American people.

In his June, 1961 commencement address at Lincoln University, Dr. King captured well the utopianism of America: ". . . in a real sense, America is essentially a dream, a dream as yet unfulfilled. It is a dream of land where men of all races, of all nationalities and of all creeds can live together as brothers. The substance of the dream is expressed in these sublime words, words lifted to cosmic proportions 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.'"

The man who would later speak of having a dream went on to reflect that the Declaration speaks of not some men, but of all men. "It does not say all white men, but it says all men, which includes black men. It does not say all Gentiles, but it says all men, which includes Jews. It does not say all Protestants, but it says all men, which includes Catholics." Because all men are created equal, and one is neither the natural nor the God-annointed ruler of the other, men can rule each other only through mutual consent. Consent requires expression through representative institutions, and this in turn implies broad suffrage, fixed terms of office, and separation of powers, not only to insure that the granted powers are not abused but that government has sufficient power to perform its necessary tasks. Both slavery and its surrogate segregation—which I lived under until the beginning of my adult life—denied Southern blacks inclusion in the scheme of the Declaration.

Two years after the Lincoln University speech, at the Lincoln Memorial, Dr. King would describe the Declaration and the Constitution as a "promissory note to which every American was to fall heir." But despite the bad check America had written black Americans, he refused to believe that the "bank of justice" was bankrupt. He knew that the resources of America were great because the dream he had of a nation where his children would be judged not "by the color of their skin but by the content of their character" was "deeply rooted in the American dream."

Dr. King gave us more to think about concerning the source of his confidence in his 1963 book, "Why We Can't Wait." Here, citing Thomas Aquinas, he notes that "An unjust law is a human law that is not rooted in eternal law and natural law." But "a just law is a man-made code that squares with the moral law or the law of God." This theme of a higher law behind the positive law is one that we today, we lawyers, we citizens who believe in the rule of law, and we who honor Martin Luther King need to take more seriously. For, as he maintained, American politics and the American Constitution are unintelligible without the Declaration of Independence, and the Declaration of Independence, and the Declaration is unintelligible without the notion of a higher law by which we fallible men and women can take our bearings.

So when we use the standard of "original intention," we must take this to mean the

Constitution in light of the Declaration. The Attorney General was careful to do this in his Constitution Day Speech in 1985, and I hope he continues to stress this essential connection throughout the Bicentennial Year. Those of us who are attorneys and all of us who deal with the law as professionals—not to mention our status as citizens under the law—must keep in mind that all the technical training we have is in the services of those enduring ideals. Of course there will be dispute about the proper interpretation of those ideals, and their application in a particular circumstance, and so forth. Democratic government and the majority rule behind it allow such disputes to be judged in a rational way. But majorities can themselves abuse power; they are legitimate majorities only insofar as they comply with the higher law background of the Constitution. Thus, completely consistent are strict obedience to the law and Dr. King's civil disobedience on behalf of a higher law, against segregation statutes.

With this theme of higher law in mind, let me make a few remarks to my fellow conservatives, many of whom have deep reservations about honoring Dr. King. We have to remember that he was only 39 when he was assassinated. Those of us who lived through the craziness of the sixties—perhaps contributing a little to it ourselves—but are still alive and have matured enough to realize our follies should not be so fast to attack Dr. King. We conservatives must recall that our political success came about only after the major civil rights legislation was passed, and the political agenda shifted such that people could call themselves conservatives with full confidence that they were not countenancing racism.

All conservatives should realize and constantly articulate the central importance of moral consensus in order to have any kind of common society, let alone a decent one. The prevalent moral skepticism, that dogmatic skepticism that refuses to question its own pig-headed insistence on moral relativism, threatens to destroy all decency in society and then dissolve society itself. How can it be that bigotry and tolerance are moral equivalents?

To counter such relativism, we, in this Bicentennial Year, should seek to renew our understanding of the natural law foundations of our Constitution. For Abraham Lincoln, the Declaration's teaching on human equality was "the father of all moral principle." Such confidence enabled the survival of this nation; it must once again be renewed so we can face today's dangers.

Conservatives in particular can benefit a great deal by serious reflection on the central place of the Declaration of Independence's "laws of nature and of nature's God." I give this advice because conservatives, I believe, more than those of other political persuasions have far more to offer Americans of all colors. Yet conservatives can learn a lesson from Dr. King. To give some examples: Surely the free market is the best means for all Americans, in particular those who have faced legal discrimination, to acquire wealth. Yet the marketplace guarantees neither justice nor truth. After all, slaves or drugs can be bought and sold. The defense of the equal opportunity to compete in a free market is a moral one that presupposes the Declaration. And Martin Luther King was fighting for that goal.

Let me cite another example of how conservative thought is deficient on an issue related to race, namely that of South Africa. No one who holds American principles dear can defend apartheid. One might even defend a form of despotism which ultimately benefited those under harsh and arbitrary rule. But no one has shown how apartheid improves those under its sway, economic benefits of living in South Africa to the contrary. In defense of South Africa, some may argue that the alternative is the black tyrannies of the rest of Africa. But not all of black Africa is tyrannical, as the Secretary of State's recent trip indicates. More to the point, the voice of the of the black tyrannies of Africa is essentially the same as that of South Africa. Both despotisms rest on premises which are ultimately traceable to nineteenth-century notions about evolution and their concomitant denial of natural rights as the basis of decent political order. The black tyrannies' rules are indoctrinated in Marxism—which they learned at British, French, and American universities. Marxism claims to be a science which gives absolute rules about human behavior and well-being. Apartheid too is based on what claims to be a science, derived as well from nineteenth-century notions of racial evolution. The English historian Paul Johnson describes the cultivation of this pseudo/science, which is rooted in reality as witchcraft, in his fascinating study of the twentieth century's assault on human freedom, "Modern Times." Both Marxism and apartheid are opposed to the American notion of equal natural rights. Marxism posits a master class, apartheid a master race. One is socialism of the left, the other socialism of the right. Dr. King's emphasis on the Declaration reminds us why we have to be opposed to both. The Declaration's standards are difficult ones to live up to, but they are the right response to our current nihilistic skepticism. Yet, nationalistic pride in having them is immediately sobered by our immense responsibility in abiding by them.

Conservatives need the Declaration's high standards to give them perspective, to make them approach politics with the proper idealism and the necessary humility. The American political writer Tom Paine is frequently quoted by President Reagan, much to the discomfort of some of his fellow conservatives. Paine declared, "We have it within our power to begin the world over again." That remains the revolutionary meaning of America. Politics is not for the purpose of gaining a temporary advantage, a chance to distribute the perquisites of power. It is not for the purpose of preserving an established order or of seeking to reinvent the wheel. In striving to preserve and bring about what is good, politics must measure itself by the standards of the higher law, of natural rights, or else it becomes part of the problem instead of part of the solution.

Having come so far in eliminating legal discrimination, we cannot fall into the trap of thinking that equal natural rights is mere rhetoric, a cloak for crass self-interest, that allows interests to be defined racially. A nation that is not based on race, that takes its bearings by standards that transcend race and apply to all humanity is what our fundamental ideals demand. This American challenge is one that must be the conservative challenge, too. And I have complete confidence that the means we conservatives possess are superior in meeting this great challenge.

To illustrate how Dr. King's focus on the Declaration might be applied today, in the area of civil rights, let us consider, once again Justice Harlan's dissent in the 1896 case of *Plessy* v. *Ferguson*, which legitimated segregation. Harlan's ringing dissent is of course known for its invocation of the color-blind Constitution. I want to reflect briefly on the substance of what Harlan argued, rather than on what has almost become a mere rhetorical slogan.

Harlan makes the following arguments against State-imposed segregation and for a color-blind reading of the Constitution. First, the Thirteenth and the Fourteenth Amendments strike down "Badges of Slavery" as well as the institution itself. Second, segregation constitutes an unreasonable infringement of personal freedom. Harlan implies that there is a private sphere which government must respect. Third, segregation is inconsistent with the original Constitution's guarantee to each state of a republican form of government. Referring to the argument of the Fourteenth Amendment as a whole, including its privileges and immunities clause, Harlan made constant reference to the duties of citizenship, and the rights they purchase.

This is what stands behind the Slogan "color-blind Constitution." The phrase refers to rights and duties, citizenship, and the distinction between a private and a public sphere. This latter argument against segregation is one we today should re-examine with care. Let us not forget that segregation is an extension of that despotic relationship of master to slave. Both slavery and segregation found support in the scientific doctrines of the nineteenth century, which found their basis in Darwinism. These ideologies held that there was no fixed, constant human nature, and a posteriori no natural rights on which to base one's political and moral life. Justice was to be found in the struggle of men, races, and nations. And with the abolition of nature and natural rights one throws out as well limited government and all the institutions which accompany it—written Constitutions, separate courts, fixed terms of office, and so on. Let us not forget that slavery and segregation were attempts to abolish or inhibit the private sphere, in the name of another private attribute, that of race. Paramount is a state-mandated set of institutions and practices. No one who truly believes in limited Government could possibly have a favorable word to say about segregation. Therefore, I applaud the Justice Department in making it clear that racial assaults will not be tolerated in this society.

Re-examining Dr. King in this way opens wounds that many of us hoped had long since healed. But it is too easy for some to forget what many, including myself have experienced—segregated restaurants, water fountains, and entrances, even in this very city, and assaults on blacks for attempting to register to vote, not to mention numerous other injustices and indignities. One might profit from a comparison of King in the segregation crisis—for example, that experienced in the Depression. The New Deal was the moderate response to that crisis—with Communism and fascism being the extreme responses. Dr. King's extremism may well have been the only moderate response to the rule of segregation.

Now today we must still question aspects of the New Deal, yet Franklin D. Roosevelt remains as popular as ever, as attested by the frequency with which President Reagan invokes his name. It is not inappropriate for us conservatives to make a similar comparison; let us honor Martin Luther King today, the same way we can admire Franklin Roosevelt. This does not oblige us conservatives to affirm all the actions either man undertook, but we can still honor them for heroism in dealing with the crises they faced.

Some of you may want to know how this understanding of Dr. King and the American political tradition relates to my responsibilities as Chairman of the Equal Employment Opportunity Commission. The Commission's offices are just up the hill from the Lincoln Memorial, and we draw inspiration from his words and those that King spoke there. A brief quotation from Lincoln explains it all very elegantly. In response to the just-announced Dred Scott decision that claimed the Constitution affirmed the right to own slaves, Lincoln argued that the Declaration of Independence "intended to include all men, but they did not intend to declare all men equal in all respects. . . . They defined with tolerable distinctness, in what respects they did consider all men created equal—equal in "certain unalienable rights, among which are life, liberty, and the pursuit of happiness. This they said, and this [they] meant. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. In fact they had no power to confer such a boon. They meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances should permit."

The EEOC is an enforcement agency which, under this Administration and Commission, is dedicated to protecting individual rights. Vigorous protection of individual rights does not require the imposition of quotas or racial preference or the creation of group rights. But a rejection of group classifications and remedies does not mean shrinking from zealous enforcement of the law. This approach to enforcement has its foundation in the Declaration and follows in the tradition of Dr. King. And I would dare-say it has its roots in the higher law.

Some of you may think I have been avoiding reference to recent race-related controversies. What relevance to these is Dr. King's significance, as I have been articulating it? In this Bicentennial year, the most significant thing we can do to improve our character as a people, and thereby perfect our relations with one another, is for our youth, still in school, to give the Declaration of Independence and Constitution a serious reading. This does not require additions to school budget, more computer terminals, or touchy-feely psychology courses. It does require the conviction that something worthwhile is to be found in those documents. If the Martin Luther King holiday can somehow lead our youth to take the fundamental laws of the land seriously, the way the Founders intended them, then its presence on our calendars is a fitting preface to our celebration next month of Washington and Lincoln, and for the entire Bicentennial year. Next month when you read or re-read the Farewell Address and the Gettysburg Address and the Second Inaugural, remember that the heritage they formed lives on in the words and deeds of the Reverend Martin Luther King.

Mr. DANFORTH. Mr. President, in examining the apparent contradiction between the stated goals of the Declaration and the reality experienced by blacks in this country, Thomas focused on two Supreme Court decisions that legitimated the twin evils of slavery and segregation, the Dred Scott decision and the Plessy versus Ferguson decision. Clarence Thomas believes that these cases were wrongly decided. In the words of a Harvard professor recently published in the Wall Street Journal, Thomas believes that the Justices in these cases failed to read the Constitution in light of the "moral aspirations toward liberty and equality announced in the Declaration of Independence."

In order to make this argument, Thomas asserts two propositions: First, the principles of the Declaration of Independence are embedded in the Constitution; and second, those principles should have dictated a different result in Dred Scott and Plessy versus Ferguson.

Thomas begins this effort by invoking Lincoln's criticism of the Dred Scott decision. As Thomas states in an article in the Harvard Journal of Law and Public Policy:

> Without the guidance of the Declaration of Independence, Lincoln explained, the Constitution can be a mask for the most awful tyranny, and not just over a particular race. With the Declaration as a backdrop, we can understand the Constitution as the Founders understood it—to point toward the eventual abolition of slavery.

In the same Harvard article, Thomas made clear that the two documents must be read together:

> If the Constitution is not a logical extension of the principles of the Declaration of Independence, important parts of the Constitution are inexplicable. One should never lose sight of the fact that the last words of the original Constitution as written refer to the Declaration of Independence, written just 11 years earlier.

And that is the quote from Judge Thomas.

Thomas believes that the principle of equality embedded in the Constitution required a different result in Dred Scott and the Plessy decision. In a Howard Law Journal article, Thomas revealed much of his purpose in exploring natural law: "Our task as defenders of constitutional government and the heritage that is indispensable to its perpetuation require us to challenge the Dred Scott decision." In the same article, Thomas argues that Justice Harlan's dissent, not the majority, had it right in Plessy. According to Thomas and Justice Harlan, the majority erred when it held that the 13th amendment and 14th amendment did not make State-imposed segregation unconstitutional. According to Thomas, Justice Taney in Dred Scott and Justice Brown in Plessy misunderstood the Constitution because they failed to understand it as the "fulfillment of the ideas of the Declaration of Independence, as Lincoln, Frederick Douglass, and the Founders understood it."

Thomas believes that the effect of the Supreme Court's misunderstanding is not simply limited to misguided constitutional analysis in the 20th century. Thomas believes that it forced the Warren Court to base its Brown versus Board of Education decision on unnecessarily weak grounds. According to Thomas in his Howard Law Journal article, "(t)he great flaw of Brown is that it did not rely on Justice Harlan's dissent in Plessy * * *. Thus, the Brown focus on environment overlooks the real problem with segregation, its origin in slavery, which was at fundamental odds with the founding principles." Clarence Thomas supports the holding in Brown, but he believes that the decision should have been written in even stronger terms than those used by Chief Justice Warren. He has described his critique as "Monday morning quarterbacking" of Justice Warren's reasoning.

It is in this context that Judge Thomas discusses his views on natural law. He believes that the Constitution cannot be understood in all its richness without reference to the principles and ideals embodied in the Declaration of Independence. It is a view, I believe, shared by a vast majority of Americans.

Therefore, I believe that the record is clear. Judge Thomas has cited natural law in connection with his keen interest in the issue of civil rights and race relations in this country. He has stressed that the notion of equality and liberty undoubtedly held by the Founders should have precluded the misguided decision in Dred Scott and Plessy versus Ferguson. He also believes that the mistakes made by the Court in these decisions continue to have an impact in present-day thinking about race relations. He has not extended this theory in any of the radical ways insinuated by his opponents, and in my view, it is insulting to imply that he has done so.

TREASURY, POSTAL SERVICE, EXECUTIVE OFFICE OF THE PRESIDENT AND INDEPENDENT AGENCIES APPROPRIATIONS, FISCAL YEAR 1992

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, could I understand the parliamentary situation? What is exactly our parliamentary situation?

The PRESIDING OFFICER. The Senator from Massachusetts controls 26 minutes, 9 seconds, the Senator from Kansas 9 minutes, 17 seconds on the amendment as offered by the Senator from Kansas and others.

Mr. KENNEDY. After expiration of time on the amendment of the Senator from Kansas, what will be the next order of business?

The PRESIDING OFFICER. When all time is used pursuant to the previous unanimous consent, the Senate will return to amendment 780 as offered by Senator HELMS relating to child pornography. Then there will be a vote on amendment No. 734, again as offered by the Senator from North Carolina, rel-

ative to AIDS, at the conclusion of which there will be a third vote on the amendment offered by the Senator from Kansas.

Mr. KENNEDY. Mr. President, I yield such time as I might use.

Mr. President, the Dole-Hatch-Mitchell-Kennedy amendment represents the best approach to dealing with the problem or possibility of a patient becoming infected through contact with a health care worker. The amendment relies on fact, not fear, and deals with the real public health issue, not just the emotion of the issue.

What does the amendment do? First of all, it requires States, within 1 year, to adopt by regulation or legislation, the guidelines published this week by the Centers for Disease Control. If the State fails to enact these guidelines, then it will be ineligible to receive Federal funds under the Public Health Service Act until it does enact them.

How do the guidelines work? First, they emphasize the critical importance that all health care workers adhere to universal precautions, disinfection, sterilization of devices, use appropriate handwashing, protective barriers, and care in the use of needles and other sharp instruments.

Second, they define those medical procedures where there might be the possibility, or a risk, of transmission. That is what the CDC described as "exposure-prone invasive procedures"—where the hands of the doctor actually enter a body cavity of a patient and conceivably some bleeding from the doctor could enter the system of the patient. The CDC is currently preparing a list of procedures where there actually might be a risk of transmission, and deals with health care workers who perform these procedures.

Third, the guidelines require that a health care worker who performs exposure-prone invasive procedures should be tested and thereby know his or her HIV status. If the worker tests positive for HIV, then he or she should not perform exposure-prone procedures unless they have sought both counsel from a hospital review panel and been advised under what circumstances they may continue to perform these procedures, including notifying prospective patients prior to exposure-prone invasive procedures of their HIV-positive status.

Thus, this amendment will protect the patient because it will actually encourage health care workers to get tested, since if they test positive, they will not be thrown out of work but may be allowed to continue their profession as long as they do not engage in any practice or procedure with a patient that could put the patient at risk. It will protect the health care workers because they will not face the Hobson's choice, if they test positive, of losing their jobs or facing a 10-year jail sentence. Thus, they will have an incentive to get tested and receive treatment, if they test positive.

Finally, it puts this vital public health issue in the hands of the States where it belongs.

By contrast, the Helms amendment does exactly the opposite. It is counterproductive. It does not protect the patient because it discourages the worker from getting tested. It also does not protect the health care worker for the same reason, because the worker will not get tested and therefore foregoes any early intervention treatment.

And finally, I would also draw again the attention of the Members to the careful proceedings undertaken by CDC in their role of leading our public health efforts. The Helms amendment takes no account of this important and effective process, and disregards the benefits of public health experience.

As I mentioned, over 70 organizations and professional associations have contributed their expertise to the formulation of the guidelines. These organizations did not endorse criminal penalties, but carefully and methodically they examined the protection we might afford a patient. This does not prohibit the States, if they so desire, from enacting penalties in their own respective jurisdictions. They are still able to do so. But, from a public-health policy, penalties were not endorsed as a component of their recommendations. The CDC has done a superb job. These guidelines emphasize first and foremost the safety of our citizens through enforcing universal precautions that benefit both patients and workers. And they require the establishment of monitoring the procedures to ensure that health care professionals practice safely.

There is a broad consensus around these guidelines, and I believe they will assist in maintaining a safe workplace. Wisely, the CDC has recognized the spectrum of approaches chosen by the States to regulate health care within their jurisdictions. This is how it should be. But we will have acted responsibly if we require the States to adopt these guidelines.

I appreciate all of the efforts of my colleagues, the majority leader, the minority leader and the ranking minority member, Senator HATCH, in the preparation of this amendment.

Mr. President, I suggest the absence of a quorum, and ask that the time be equally divided.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, I am going to yield back the remainder of our time in about 1 minute. I want to make one final point to indicate that there are going to be two votes on AIDS. I think the consensus amendment is the better amendment. I think, as I have indicated, it was probably inspired because of the efforts of Senator HELMS.

I will vote for Senator HELMS' amendment because I think it helps focus on the seriousness of the issue before us. However, having said this, I think the best method in dealing with health care providers is not through the criminal justice system, at least at this point, not with criminal penalties, but rather through the State licensing process. The impact of losing one's license is, in fact, in most cases a far more frightening prospect for many as it could mean permanent loss of one's livelihood.

So, before the vote, I wanted to make it clear we will be voting first on the child pornography amendment, and then on the Helms amendment on AIDS, and the third vote will be the consensus amendment by myself, Senator MITCHELL, Senator HELMS, Senator KENNEDY, and Senator HATCH. I do believe that is a better alternative.

Having said that, Mr. President, I yield back the remainder of the time on this side.

Mr. KENNEDY. Mr. President, I, too, will yield back the remainder of the time in just a few moments.

I indicated earlier in the debate several organizations that have opposed the Helms amendment and which support the leadership's amendment. I would like to read, in the final moments, some relevant paragraphs. This is from the American Medical Association; their concluding paragraph:

> The American Medical Association believes that only through application of sound medical principles, rather than through the arm of the criminal justice system, we will be able to confront the issues of HIV-infected health-care workers. * * * The AMA strongly opposes the Helms amendment * * * effectively urges its defeat and supports the use of the CDC guidelines as the best mechanism to protect the health-care workers and their patients.

The American Academy of Pediatricians:

> We strongly oppose the Helms amendment and any other efforts that seek to impose criminal penalties, and thus provides disincentives for voluntary testing and counseling by health-care workers.

From the Association of State Health Offices, I read the appropriate paragraph:

> Alternative approaches such as that offered by Senator Helms which criminalizes nondisclosure will actually serve to deter and discourage health-care workers from seeking testing or treatment for HIV infection and most certainly limit disclosure of their HIV status to patients.

We have the representatives of many organizations saying that the approach of the Senator from North Carolina is a counterproductive one, and they urge a negative vote on the Helms amendment, along with their support for the leadership's amendment.

Finally, Mr. President, I have heard my colleagues indicate support for both amendments, but basically these amendments come at this issue in completely different ways. The Helms amendment discourages testing, and the CDC amendment encourages testing for the reasons that I have outlined here. The Helms amendment is mostly based in an ideological and emotional context, and is actually counterproductive to the goals we seek to achieve. The leadership amendment is based on sound public-health policy as reported from our public-health experts. I urge that the amendment of the Senator from North Carolina be rejected.

Mr. President, I ask unanimous consent that each of the succeeding votes ordered to occur after the first rollcall vote relative to the disposition of amendments to H.R. 2622 be 10 minutes in duration.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I yield the remainder of my time.

Mr. DECONCINI. Mr. President, I ask for the yeas and nays on final passage of the Treasury-Postal Service appropriations bill.

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

The yeas and nays were ordered.

AMENDMENT NO. 781

Mr. CRANSTON. Mr. President, the amendment by Senators DOLE, MITCHELL, HATCH, and KENNEDY require the States to adopt the guidelines for infected health-care workers that were issued by the Centers for Disease Control earlier this week.

To my mind, there is a world of difference between threatening health care workers with jail and encouraging sound medical practice. I strongly oppose the Helms amendment. I strongly favor the Dole/Mitchell/Hatch/Kennedy amendment.

The CDC guidelines are the result of months of consideration by scientists and laypersons. The CDC has been in the business of developing guidelines for medical practice for some 45 years. These guidelines represent the best thinking on how to reduce the risk of HIV transmission from health care workers to patients.

Under the CDC guidelines, all health care workers would maintain strict compliance with universal precautions. These precautions include sterilization of equipment and the careful handling and disposal of sharp instruments. Health care workers who test positive for HIV would either refrain from performing certain high-risk invasive procedures or obtain consent from prospective patients before performing such procedures. The CDC guidelines assert that health care workers who perform exposure-prone, or high risk, procedures should know their HIV antibody status. In other words, they should get tested. Those who are positive should not perform exposure-prone procedures without first notifying an expert review panel to detemine under what, if any, conditions they may do so. They would disclose their HIV status to patients.

Mr. President, the basic question before the Senate is this: What is the best way to reduce the risk of transmission of the AIDS virus from health care workers to patients? Is health care policy to be made and enforced through the criminal justice system? That is not an effective means of reaching the goal, which is to assure that HIV is not transmitted in the course of health care.

I believe that threatening health care workers with jail will tend to discourage them from being tested, and for those who already know their status, to make them more fearful of seeking treatment out of fear of disclosure. Also, the Helms amendent makes no mention of the hepatitis B virus, which poses a far greater risk of transmission that does the HIV virus. The CDC guidelines specifically mention hepatitis B, and, in fact, are written to reduce the risk of transmission of any disease.

The amendment now before us takes a very different approach. This amendment effectively mandates compliance by the States with the CDC guidelines by withholding Federal public health grant funds unless CDC guidelines are incorporated into State licensure laws or regulations. It is the States that traditionally regulate medical practice in this country, not the Federal Government nor the criminal justice system. Regulation of medical practice by the States simply makes for sound medical policy. The manner in which the CDC guidelines should be implemented will vary from State to State, as this amendment allows.

Mr. President, I believe that the Federal Government moves into dangerous territory when it tries to dictate professional ethical standards and penalties for the practice of medicine. What the CDC has done is spell out professional standards that provide guidance to State agencies and professional bodies that traditionally regulate medical practice. What the Dole/Mitchell amendment does is mandate that the States, not the Federal Government, find ways of making the CDC guidelines work under the licensure laws that are unique to each State.

Mr. DURENBERGER. Mr. President, I rise in support of the amendment, which is jointly offered by my distinguished colleagues from Kansas, Utah, Maine, and Massachusetts. This proposal requires States to adopt the recommendations of the Centers for Disease Control concerning the transmission of the HIV virus by health care professionals.

Mr. President, throughout this debate I have continually urged that we respect the facts and not succumb to emotion. The amendment before us does precisely that.

The Centers for Disease Control have gathered experts together to develop recommendations to prevent the transmission of HIV and hepatitis B virus in the health care setting. This effort represents the latest scientific evidence that is available.

This amendment requires States to adopt these CDC guidelines by regulation or legislation. The guidelines provide state-of-the-art science to assist the States in developing appropriate procedures for infection control.

The States can get the job done. State departments of health have had a long history of exercising these skills and in regulating public health activities in each State.

A balanced approach is possible. I would like to submit for the RECORD a copy of the HIV control policies developed at the University of Minnesota Hospital and Clinic. No hospital in the Nation has established so detailed a policy. The procedures are consistent with the CDC guidelines, as well as clear and fair for patients and professionals. They should serve as a model for responsible infection control.

The policy at the University of Minnesota balances the interests of patients through rigorous controls and the interests of health care workers by requiring disclosure of HIV status to the hospital epidemiologist. The hospital provides information and training to HIV infected workers. It also forbids such workers from performing certain invasive procedures.

I believe that the CDC guidelines represent an important start in our fight against AIDS and in our efforts to restore public confidence in medical treatment.

However, we are not just passing an amendment here, we must make sure that it works in the right way. I am concerned that the guidelines in some cases are quite general and that they would be difficult for States and communities to implement consistently.

For example, there is no definitive list of exposure-prone procedures, for which the highest levels of precaution are appropriate. When left to 50 States or to thousands of community hospitals to implement, the somewhat vague language in the guidelines may lead to unequal application.

The particular danger is that, in this atmosphere of fear and alarm, hospitals might be pressured into excessive restrictions. Hospitals are entitled

to the wisdom of the CDC in identifying high risk procedures. The public is entitled to uniform standards no matter where they seek treatment. Health care providers are entitled to appropriate proscriptions of clinical practice.

Dr. William Roper, director of the CDC, yesterday reassured me that he will convene panels of specialists to develop these lists of exposure prone procedures. They should be available in a few months. However, we do not want hospitals and health care providers to delay. We want all relevant parties to act with dispatch. All necessary precautions and procedures must be immediately implemented. The scientific process is an evolutionary one. The CDC will continue to refine and improve all aspects of the guidelines as the data becomes available and more is learned about the deadly virus.

Yesterday, the chief executive officer of the Minnesota Medical Association, Dr. Paul Sanders, stated in the St. Paul Pioneer Press: "If legislation is done as a knee-jerk reaction to public hysteria, it would be bad." This legislation is not a knee-jerk reaction. It is a reasoned approach to a public health problem. I urge my colleagues to support it.

I ask unanimous consent to have printed in the RECORD two articles from Minnesota Medicine, April 1991, on HIV in the health care setting.

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

[From Minnesota Medicine, April 1991]

HIV INFECTION IN THE HEALTH CARE SETTING: PUTTING THE RISK IN PERSPECTIVE

(Minnesota Medicine Interviews Michael T. Osterholm, Ph.D., M.P.H.)

With the recent news of a Florida dentist transmitting the human immunodeficiency virus (HIV) to at least three patients, the public has become increasingly concerned about the risk of acquiring HIV infection from health care workers. The debate has become intense, with some pushing for mandatory AIDS testing and others adamantly opposing it.

In February, the American Medical Association and the American Dental Association issued a joint statement saying physicians and dentists who perform invasive procedures and are at risk of acquiring AIDS should be tested, and if HIV-positive, should either inform their patients or refrain from performing risky procedures. Response to the statement has been varied but strong, with many physicians arguing that it comes too close to proposing mandatory AIDS testing.

State Epidemiologist Michael Osterholm, Ph.D., M.P.H., recently reviewed the risk of acquiring HIV infection with the Zumbro Valley Medical Society's Legislation Committee. He presented data suggesting that widespread mandatory testing would do little to lessen the risk, which is minimal. Osterholm's discussion, which is recapped in this interview, convinced the society to postpone action on the bill.

Osterholm, also chief of the Acute Disease Epidemiology Section at the Minnesota Department of Health, has led studies to determine the risk of HIV infection in the health care setting, including the risk of patients transmitting HIV to health care workers.

Osterholm and the Health Department have been on the forefront of the AIDS issue, leading the nation in determining the accuracy of HIV testing and the risk of transmission in the health care setting. Osterholm, who believes some concerns about AIDS have been exaggerated, serves as a consultant to the Centers for Disease Control on this issue and is working to promote development of a reasonable policy that distinguishes between true risk and public fear.

MINNESOTA MEDICINE: Dr. Osterholm, thank you for agreeing to discuss a subject of great concern to health care workers and patients. We would like to hear your comments regarding the risk of acquiring AIDS in the health care setting. Can you help us put that risk in perspective?

OSTERHOLM: To deal with the issue, we need to examine the risk of human immunodeficiency virus (HIV) transmission from patients to health care workers and, as the public is now demanding, from health care workers to patients. Many of the issues that affect one discussion affect the other.

I am concerned about our understanding of the concept of risk—something our society has had problems coming to terms with in a lot of other areas, such as the environment and product liability. What is the risk, and how much risk is society willing to accept?

I believe we could completely eliminate the patient's risk of acquiring HIV from health care workers. However, the cost would be extreme, not just in terms of money but also in terms of the amount of testing involved and the resulting diversion of resources. The converse is also true. We could ensure that a patient would never infect a health care worker—or at least come very close to that. But, again, the cost—economic and otherwise—must be considered. To guarantee that level of safety, some infected people would be denied certain services, some kinds of procedures would be avoided, and the type of technology we can apply to those procedures would be limited.

Instead of taking these extreme measures to eliminate the risk of HIV transmission entirely, we are trying to find a middle ground where the risk is acceptable—whether it be one in a million or one in 100,000. At the same time, we want to avoid prohibiting a health care worker from doing his or her everyday job and denying patients the services they need.

MINNESOTA MEDICINE: Do you think widespread HIV testing would significantly reduce the spread of AIDS?

OSTERHOLM: Since 1985, we at the Minnesota Department of Health have strongly supported widespread testing of people who engage in behavior that puts them at risk of acquiring HIV. We believe it's very important for patients to know if they're infected. Early, appropriate treatment of HIV with Zidovudine (AZT) and other drugs can significantly increase the quantity and quality of life for people who are infected. This is similar in concept to managing patients with diabetes in the early stages to maximize the quality of their lives. We also know from studies that patients are more likely to initiate and maintain positive behavior to reduce the risk of HIV transmission if they know they are HIV-infected.

From the health care worker's standpoint, it's important to know about all aspects of a patient's health. A physician who is not aware of a patient's HIV infection cannot provide the most beneficial care, regardless of whether the physician is treating a broken leg or Pneumocystis pneumonia.

On the other hand, testing as we know it today has not increased infection control. All the data I am aware of demonstrate that knowing a person's HIV status does not reduce a surgeon's or other health care worker's risk of exposure to a sharp instrument. We would be the first to promote responsible testing in the health care setting if data existed to show it works. It just doesn't. What it does is cause relaxation of other infection-control measures.

The same is true for testing of health care workers. We have no data to support that widespread testing of health care workers would reduce the already very low risk of HIV transmission to patients.

HIV Testing

MINNESOTA MEDICINE: Before we further discuss the risks of acquiring HIV in the health care setting, let's talk about the rests. The public has misconceptions about what HIV testing involves. People hear about false positives and false negatives. Could you discuss the tests and their efficiency?

OSTERHOLM: The whole issue has evolved since testing was introduced in 1985 to improve the safety of the blood supply. In 1985, we at the Minnesota Department of Health wrote the first major article in the country on concerns about the performance of HIV-antibody serology. The commentary was published in the New England Journal of Medicine three weeks before U.S. blood banks introduced HIV-antibody serology as part of a mandatory screen for blood donors. We discussed sensitivity, specificity, the predictive value of a positive result, and most important, what would happen to the blood supply if every year we mistakenly told 2 percent to 3 percent of the population they were HIV-positive. For one thing, many people wouldn't want to donate blood anymore, and we'd be diminishing the small group of people who routinely donate blood.

Since 1985, more than 450,000 donors have given blood in Minnesota. During this time, 23 donors tested positive for HIV by enzyme immunoassay (EIA) and Western blot. Twenty-two donors were then tested by virus culture to determine if they were really infected. The HIV culture was positive for all 22. The other donor who was found to the HIV-antibody positive was not available for testing. However, he was likely infected since he had a risk factor for HIV infection and was positive for hepatitis B surface antigen. There wasn't a single false positive in that entire group. This high degree of accuracy can be explained by a couple factors. First, the EIA test is what I'd call "oversensitive," so it picks up individuals who are not truly infected. The Western blot test, which is used to confirm a reactive EIA, has a very high specificity. Using both tests allows us to maintain extremely high sensitivity and specificity. In the hands of a competent laboratory technician, this test is as good as any in medicine. Consequently, I'm not concerned that someone will inappropriately be labeled infected.

MINNESOTA MEDICINE: If I remember right, since 1985 no one has acquired AIDS from transfusions, but, naturally, some people are greatly concerned about that possibility.

OSTERHOLM: Your question brings up the flip side of the blood screening question, that is, has our testing missed someone who really was infected, and has that infected blood then been used for transfusion? We can't guarantee that hasn't happened, but of all

the transfusion recipients who received blood after 1985 and have been tested, not one has tested positive for HIV, and many have asked to be tested. As far as we're aware, not one of the 350,000 Minnesotans who received blood from 1985 to 1990 has been diagnosed with HIV infection resulting from a transfusion.

It's important to realize that approximately 25 percent of those who receive blood would have died during the initial trauma if the blood had not been available. The number of Minnesotans alive today because they received blood would more than fill the Metrodome, and not one has been identified as having HIV. This helps put the risk in perspective.

MINNESOTA MEDICINE: Let's talk about HIV-antibody seroconversion. How long does it take for HIV infection to show up on the antibody test once a person has been exposed to HIV?

OSTERHOLM: That depends on which testing method we accidental exposure to blood.

We can conclude several things from our experience with HIV infection thus far. First, patients and physicians have minimal risk of contracting HIV infection in hospitals or other medical settings. The extreme cost and the minimal benefits make mandatory testing inappropriate. Second, physicians who are HIV-positive should voluntarily refrain from performing surgical procedures or disclose their infection to the patient and proceed only with informed consent. In addition, all health care workers at risk of HIV infection because of their lifestyles should be tested, seek counseling, and refrain from high-risk behavior. Third, organized medicine—at all levels—should be more involved in programs to educate the public and their member physicians about minimizing the risk of HIV infection.

[From Minnesota Medicine, April 1991]

HIV INFECTION IN THE MEDICAL WORK PLACE: ARE PHYSICIANS AND PATIENTS AT RISK?

(By Edmund C. Burke, M.D.)

Picture this scene: As you approach the health care facility, you see a sign reading, "Welcome to the XYZ clinic: Our doctors are HIV-negative," or "Welcome to the XYZ clinic: Only HIV-negative patients accepted."

Absurd, you say? Well perhaps, but maybe not impossible, considering the public's confusion and anger over the case of a Florida dentist transmitting HIV infection to at least three patients, and the AIDS-related death of a noted Johns Hopkins surgeon who had operated on about 1,800 patients.

The public has a right to be concerned. Organized medicine seems to have lost the initiative to educate the public about the true nature of HIV risk in the medical setting. Some physicians have even retired from surgery because of concern over acquiring HIV.

The Zumbro Valley Medical Society's Legislation Committee recently discussed the issue at length. Initially, the committee felt legislation for mandatory testing of all health care workers was appropriate, so it drafted a bill. The proposed bill provoked a blizzard of retorts and angry remonstrations, prompting the society to gather more information. It invited State Epidemiologist Michael Osterholm, Ph.D., and Michael Moen, director of Disease Prevention and Control at the Minnesota Department of Health, to Rochester to discuss the issue.

What the Zumbro Valley Medical Society learned was indeed a revelation. Much of the information, which convinced the society to postpone action on the bill, is contained in this month's Face to Face interview with Michael Osterholm (page 9). He points out that rhetoric on the AIDS epidemic has reached a hysterical point in many areas of the country. Therefore, it's important that we exert our utmost effort to educate the public on the minimal risk of HIV transmission in the health care setting.

There is definitely less risk of infection in areas of low HIV prevalence such as Minnesota. In New York City, one of every 20 patients is infected with HIV, compared with one of every 120,000 in Greater Minnesota, according to Osterholm. Current studies estimate that about three per 1,000 HIV-exposed health care workers will actually become infected. In other words, 997 will not develop HIV after such exposure.

Overall, AIDS and HIV infection are not very prevalent in Minnesota. Slightly over 800 AIDS cases and 1,548 HIV infections were reported to the Minnesota Department of Health by the end of 1990, according to the Minnesota Department of Health Disease Control newsletter (December 1990). The majority of these patients live in the Twin Cities area and are homosexual or bisexual men and/or intravenous needle users. The Minnesota Department of Health predicts the number of AIDS cases in the state will reach around 1,238 to 1,611 by the end of 1992. In a state with a 4.3 million population, these numbers are relatively small.

When we consider the cost of mandatory HIV testing and the question of how often to test, the issue becomes very complicated. We can assume that eventually the cost will filter down to the patient paying the bill, and since we are already deeply concerned about medical care costs, mandatory or indiscriminate HIV testing is out of the question.

As medical students, we were taught that the only way to halt an epidemic is through preventive measures, not treatment. An article in the June 21, 1990, New England Journal of Medicine entitled "The Risk of Exposure of Surgical Personnel to the Patient's Blood During Surgery at San Francisco General Hospital" by Gehberding et al., revealed that accidental exposure to blood occurred during a number of procedures, and neither knowledge of a diagnosed HIV invection nor awareness of a patient's high-risk status influenced the rate of exposure. However, double-gloving prevented perforations of the inner glove and cutaneous exposure of the hand. The authors' data support the practice of double-gloving and the increased use of waterproof garments and face shields to prevent mucocutaneous exposure. However, no evidence was found to suggest that preoperative testing for HIV infection would reduce the frequency of use. If we use the sequential EIA and Western blot testing, which is the standard method, seroconversion for most infected persons will occur within 45 to 60 days. Seroconversion can take as long as six months for 1 percent or 2 percent of individuals infected with the virus. The vast majority of people who have seroconverted have detectable antibody within the first two months after infection. With health care workers who have a documented exposure, we've gone one step further and are now using things like p-24 antigen, polymerase chain reaction testing, and HIV culture. Using these supplemental tests, we can be almost certain of infection status within 35 to 45 days.

Health Care Workers' Risk

MINNESOTA MEDICINE: What is the prevalence of HIV and AIDS in health care workers?

OSTERHOLM: HIV-infected health care workers need to be separated into two categories—those who acquired the virus through nonoccupation-related behaviors, including male-to-male sex and IV needle use, and those who acquired the virus occupationally. Of the 150,000 adult AIDS patients diagnosed in the United States through 1990, approximately 8,000 are health care workers. This large number often surprises people, but it shouldn't, because health care workers make up about 5 percent of our nation's work force. The majority of those 8,000 health care workers acquired AIDS through risk behaviors not related to their occupations. By far, most are men who have had sex with men. This shows that we haven't done the best job in promoting risk reduction or behavior change in our own health care workers—the very people who are supposed to be helping the general population reduce their risk.

Some health care workers do acquire HIV infection as a result of their occupations. Currently in this country, we are aware of approximately 46 people who have acquired HIV as a result of an occupational exposure. Thirty of those are individuals with confirmed exposure. They tested negative for the virus immediately after the exposure and seroconverted within six to 10 weeks following exposure. The other 13 we call prevalent-positive, meaning they were positive when tested. These include individuals infected prior to 1985, before HIV serology was available. However, in this latter group, we cannot account for any other source of their HIV infection. Currently, there are only three occupation-related AIDS cases in health care workers. Most, if not all, of these other 43 HIV-infected health care workers will become the occupation-related AIDS cases of tomorrow.

As of September 1990 in Minnesota, we had 46 cases of AIDS in health care workers, 43 of them men. The mechanism of transmission of HIV has been identified for all 46 cases, and none of the cases represents occupational exposure.

MINNESOTA MEDICINE: From your description, the health care setting is not a particularly risky place for acquiring AIDS.

OSTERHOLM: That depends on your perspective, of course. If you're one of those 46 individuals from around the country who is HIV-infected as a result of occupational exposure, you'll probably say the work place is very risky. But if we look at the big picture, a health care worker has a greater statistical chance of dying in a car accident on the way to and from work than of acquiring and dying from occupation-related AIDS. I agree, however, that this statistic isn't particularly comforting to the health care worker. Many health care workers argue that an individual willingly assumes the risk of driving a car, but that isn't the case when a person is accidentally exposed to HIV in the health care setting. I think that's a legitimate point, but still, the risk of acquiring HIV on the job is incredibly low.

MINNESOTA MEDICINE: Does the risk vary from one part of the country to another?

OSTERHOLM: Yes. The risk of developing HIV infection depends on several factors, including the likelihood of being exposed to blood. The exposure rate varies by occupation, the procedures a person does, and, to a certain degree, the person's technique. Also important is the prevalence of HIV infection at the institution where a person works. For example, in some hospitals in New York City, one out of every 20 patients is infected with HIV, compared with Greater Minnesota,

where only about one of every 120,000 people is infected. The other factor is the likelihood of transmission occurring when a person is exposed. We know from studies that about three per 1,000 health care workers who have a percutaneous exposure from a sharp contaminated with HIV-positive blood will actually become infected. In other words, 997 out of 1,000 health care workers who were exposed to HIV through a break in the skin will not develop HIV after that exposure. Given the rate of HIV infection in Minnesota patients, the lifetime chance of a health care worker in a Minnesota hospital developing acute infection ir roughly about five in 100 million procedures. We would expect less than one case per 1,000 surgeons over a lifetime after accounting for all the factors. However, this number changes if you're at an institution in New York City, where up to five of every 1,000 surgeons can expect to develop HIV infection during their lifetimes. The big difference is not their technique or the rate of transmission given a positive exposure; it's the number of patients they see who have the virus.

Patients' Risk

MINNESOTA MEDICINE: Let's examine the other side, namely, the patient's risk. What is a patient's risk of acquiring AIDS from surgeons or other health care workers?

OSTERHOLM: As you know, this issue is being played up on television and on the front pages of our newspapers and weekly tabloids. However, to date, we know of just a single instance of patients being infected by a health care worker. In this case, HIV was transmitted from a Florida dentist to three patients. There will be more. But what is the risk over time? Is it one in 1,000 instances? One in a million? One in 10 million? That's where there may be some reasonable disagreement. Our experience with HIV and health care workers transmitting to patients is limited, but we have a relative wealth of information regarding hepatitis B, and many parallels can be, and should be, used to help anticipate the HIV experience.

MINNESOTA MEDICINE: Please expand on the concept of hepatitis B as an analogy to HIV infection.

OSTERHOLM: First, we know that hepatitis B virus is transmitted in manners identical to HIV. The one difference is quantitative, not qualitative. All the same bodily fluids are involved, but when a person receives a needle stick from a hepatitis B-infected patient, transmission occurs about 30 percent of the time. With HIV, as I mentioned, it occurs only about three out of 1,000 times.

In Minnesota, we've had a very active hepatitis B surveillance program. In fact, our first efforts were reported in Minnesota Medicine in the early 1980s and subsequently have been published in other journals like JAMA. We have followed up on all health care workers to learn where they received their infections. We've also followed up on all patients, attempting to discern where they acquired their infections, considering the health care worker or contaminated blood as possibilities. In 15 years, we've followed more than 430 infected health care workers and identified only two who transmitted hepatitis B to patients. One was an obstetrician/gynecologist in the Twin Cities who transmitted hepatitis B to three patients while performing vaginal hysterectomies. The physician had only recently become infected and was not aware of it. He was doing vaginal hysterectomies using his left index finger to locate the tip of the suture needle. The needle was in his right hand; he was sticking his glove into this blind field, causing him to bleed through the tips of his fingers. He has stopped using that technique and has continued to perform other surgical procedures, and there has been no evidence of hepatitis B transmission to other patients for the last 12 years. The other instance involved a surgeon who transmitted the hepatitis B virus to a patient during a rather uncomplicated surgery that took place one day before the surgeon's acute onset of hepatitis B. We know of other surgeons in this state who are chronic carriers of hepatitis B, but we have no evidence that they have transmitted it to patients.

As infectious as hepatitis B is, we know of only two infected health care workers who have transmitted the infection in Minnesota. I predict that if 500 health care workers became infected with HIV in this state, we very well might have no HIV transmission to patients. This is basically the same issue raised earlier of patient HIV transmission to health care workers. We have to apply the same logic and risk standards to health care workers as to patients. I do not see this as an issue warranting the dramatic measures that some people have suggested. I believe people are overreacting to public pressure and unnecessary fear of the situation.

Fear of AIDS

MINNESOTA MEDICINE: Is AIDS like many problems in medicine, where people are unfamiliar with the facts, and they become fearful to the point of hysteria?

OSTERHOLM: Yes, and AIDS typifies this as well as any issue in society. In 1985, I attended school board meetings to discuss the risk of HIV in school children and whether infected children should be allowed to attend school. There has never been evidence of HIV transmission in the school setting, even though HIV-infected children attend school. At the meetings, I saw parents stand at the microphone with a cigarette in their hand and say, "I can't accept any risk to my child. I can't accept HIV-infected children in my child's school." At about the same time as these meetings, eight Minnesota children were killed in school bus accidents, yet those same parents put their children on the school bus every morning, and they allowed them to play football—a sport that four children died while playing that same year. I'm terribly concerned that we might be approaching HIV infection in health care workers similarly—with exaggerated fear clouding reality.

MINNESOTA MEDICINE: As a final question, what kind of HIV-testing recommendations do you think the Centers for Disease Control will make?

OSTERHOLM: As a scientist, I like to believe that the real world operates on fact, although I know that's not true. I am concerned that political, as well as scientific, issues may be brought to bear on the Centers for Disease Control. It will be interesting to see to what degree the political process influences scientific decisions. If the decisions stay in the hands of the scientists, I have great faith that the CDC will establish a reasonable policy that is responsive to the interests and needs of all parties. If there is too much political influence, I believe policies will eventually be in place that are not based on science and fact, but will instead appeal to certain constituencies.

We need more forums like this interview to spur reasonable policy development. We need to put the issues on the table in order to distinguish fact from emotion. Somewhere in between we'll find a reasonable policy.

POLICY AND PROCEDURES MANUAL, UNIVERSITY OF MINNESOTA HOSPITAL AND CLINIC

Subject: HIV Control.

Source: Infection Control Committee Medical Staff-Hospital Council.

Section: Infection Control.

Volume II.

Policy Number: 33.19.

Effective: July 14, 1987.

Revision: 12/87, 9/90.

Reviewed: 10/89.

POLICY

All reasonable measures shall be taken to minimize the possibility of human immunodeficiency virus (HIV) transmission within UMHC.

PROCEDURE

1. Definitions used in this policy:

a. HIV Infected. Persons deemed HIV infectious as set forth in Section 4.B. Policy 33.21, Universal Blood and Body Substance Technique and Isolation.

b. UMHC Personnel. UMHC employees, residents and fellows, members of the Medical-Dental Staff, Specified Professional Personnel, Non-Hospital Ancillary Personnel, and students who have patient contact at UMHC.

c. Invasive Procedures. Procedures in which one's hand and any sharp instruments may simultaneously be in a vulnerable patient cavity such as an operative wound, the abdominal cavity, or the mouth.

d. HIV Infection Risk Activities. Activities placing one at risk of HIV infection as enumerated by the CDC for the exclusion of persons from blood or plasma donations. These include males who have had one or more sexual contacts with another male since 1977 and all persons who have had any unprotected sexual contacts or blood transfusion in sub-Saharan Africa or Haiti, shared needles used for self injection of drugs since 1977, receipt since 1977 of coagulation factor concentrate that has not been heat treated, been a prostitute at any time since 1977, and sexual contact with any person who has participated in one or more of the aforementioned HIV infection risk activities.

2. All HIV Infected UMHC Personnel.

a. HIV infected UMHC personnel shall be excluded from patient care activity unless there is a determination by the Hospital Epidemiologist that the employee understands the mechanisms of HIV transmission and will take steps necessary to prevent HIV transmission.

b. HIV infected UMHC personnel shall meet regularly with the Hospital Epidemiologist at the discretion of the Hospital Epidemiologist.

3. UMHC Personnel Who Perform Invasive Procedures.

a. UMHC personnel who perform invasive procedures and have engaged in HIV infection risk activities shall determine their anti-HIV status. Anti-HIV negative UMHC personnel who continue to engage in HIV risk activities should monitor their anti-HIV status as appropriate. Such persons may seek counsel with the Hospital Epidemiologist as to what is appropriate.

b. HIV infected UMHC personnel who perform invasive procedures shall inform the Hospital Epidemiologist and their Chief of Service of their HIV infection status.

c. HIV infected UMHC personnel shall not continue to perform invasive procedures unless the Chief of Service and the Hospital Epidemiologist are satisfied that the person will exercise appropriate infection control safeguards. Under no circumstances may the person perform procedures requiring blind,

"by feel" manipulation of sharp instruments (e.g., vaginal hysterectomy).

4. Patient Exposure. In case of accidental transfer of blood from an HIV infected UMHC person to a patient, the HIV infected UMHC person shall inform the patient's staff physician, and the Hospital Epidemiologist. The patient's physician shall assume responsibility for assuring that the patient is informed. The Hospital Epidemiologist shall assure follow-up of the patient.

5. Needlestick. See Policy 33.18, Needlestick or Other Significant Exposure to Blood or Other Body Fluids.

6. HIV isolation policy. See Policy 33.21, Universal Blood and Body Substance Technique and Isolation, for isolation policy for HIV infected patients.

Mr. WOFFORD. Mr. President, today, I speak in support of the Dole amendment, which requires states to adopt the rules of the Centers for Disease Control to prevent the transmission of the HIV virus by health care professionals to their patients.

The issue before the Senate today is a vital public health issue that concerns all Americans. The transmission of the AID's virus from a health professional to a patient is a tragedy of the highest order and one which we are called upon to do everything in our power to prevent. We need to protect everyone. And we need to ensure that what we are doing will provide that protection.

Mr. President, I believe that adoption the Dole amendment provides such protection and best assures the peace of mind to which each American is entitled every time they visit their doctor or dentist.

On Monday, the CDC issued guidelines that toughen their recommendations to prevent transmission of the HIV virus and hepatitis B virus to patients in a health care setting. I commend the CDC for the careful way in which they formulated these guidelines and the thoroughness with which they addressed public concerns about possible transmission.

Mr. President, we need legislation which lays out steps to protect the public health. The Dole amendment does just that. It directs states to enact legislation adopting the recently issued CDC guidelines and provides that they incorporate these guidelines into their rules for licensing health professionals. Under the Dole amendment, no State shall receive assistance under the Public Health Service Act if it fails to do so.

Mr. President, to adequately provide for the public health, and more importantly, to retain the confidence of the people in the quality and safety of their public health environments, we need to mandate compliance with the CDC guidelines throughout this country. With this legislation we provide tough incentives for states to do just that.

Doctors who fail to comply with the CDC policy should face stiff, criminal penalties. I urge all States to incorporate the CDC guidelines in such a way that every health provider understands the need to follow CDC policy to the letter. Doctors should be required regularly to certify that they are in strict compliance with the guidelines. States should instruct their licensing boards to assure universal compliance and empower those licensing boards to hand out stiff punishments to those who do not comply. And every State should clearly spell out what the punishments will be, including strong, criminal penalties.

Most importantly, we need to do everything in our power to assure that what happened once to a lovely young woman and four other innocent people in Florida, never happen again. The CDC guidelines lay out on a scientific, medical basis precautions to provide this assurance. I urge every State to lay out clear, tough penalties that assure the widest possible compliance.

Mr. CHAFEE. Mr. President, I want to say a few words about the amendments before us, and our efforts to come up with effective methods of preventing the transmission of HIV infection from health care workers to their patients.

The amendment proposed by the Senator from North Carolina would make it a Federal crime carrying a minimum 10-year prison sentence for an HIV-infected health care worker to provide treatment to a patient without disclosure of his/her HIV infection. The amendment proposed by Senator DOLE will require states to adopt the Centers for Disease Control guidelines.

There is no question that HIV infection—and AIDS—is one of the most significant health problems facing our Nation today. Most people infected with the human immunodeficiency virus, or HIV, will develop AIDS, which is always fatal. Despite the tremendous gains made by the medical community over the past decade in broadening our understanding of this deadly virus, and its affect on the body's ability to ward off infection, we are still not close to achieving a definitive vaccine or treatment. We have, however, learned a great deal about how this virus is—and is not—transmitted.

There are situations where health care workers have been infected while they were caring for HIV-infected patients. These situations, although tragic and heartwrenching, are relatively few in number—only 40 cases out of the several million people in the United States estimated to be infected with HIV.

What about the transmission of the virus from a health care worker to a patient? We've all seen the recent report about the apparent transmission of HIV from an infected dentist to patients in his practice. This situation, while horrifying in its impact on these individuals' lives, appears to be unique. Of the 1.5 million people estimated to be infected with HIV in the United States, only five have been infected by a health care provider, and all five of these unfortunate individuals were infected by the same Florida dentist.

No studies about HIV transmission have identified doctor-to-patient transmission. Health care workers from all professional backgrounds—physicians, nurses, nurses aides—have cared for patients in many different health care settings over the past decade, and yet only this one example has indicated a link of HIV transmission from health provider to patients. Clearly something unusual was going on in this dentist's practice, and I am sure investigations will uncover these activities.

CDC has estimated that the risk of getting HIV infection from an infected surgeon is miniscule—one-tenth the risk of death from anesthesia for surgery. Yet because AIDS is universally fatal, even one case resulting from transmission from a health care worker to a patient is one too many. These cases, although few, must be prevented.

The amendments we are considering today seek to accomplish this end through very different mechanisms. The Helms amendment will criminalize the medical practice of HIV infected health care workers. The Dole amendment reinforces public health principles by requiring States to enforce the newly released Centers for Disease Control guidelines to prevent HIV transmission to patients during exposure-prone invasive procedures. I will support the Dole amendment because it will effectively accomplish our goal of eliminating the remote risk of transmission from health care workers to patients. It is based on scientific fact and is good health policy. I will not support the Helms amendment because I do not feel it will accomplish the goal we desire, and in fact may actually undermine our current HIV prevention efforts.

First, we know that an infected physician poses no threat to his patient by touching him, by doing a routine physical examination, or performing most examinations, tests, or procedures which we have all undergone in a physicians office. Taking a pap smear test or drawing blood poses no risk to a patient.

Studies show that the only risk which may occur—and even then it is a minimal risk—is with what are called exposure-prone invasive procedures, such as orthopedic surgical procedures, where the doctor may inadvertently nick a glove. Yet the restrictions in the Helms amendment require disclosure even for procedures which pose absolutely no chance for HIV transmission. The restrictions and potential for criminal prosecution are simply too broad.

Second, since this amendment criminalizes only those providers who know of their HIV infection but con-

tinue to practice, it may actually discourage providers from being tested. Doctors, fearing criminal liability, could purposely avoid being tested for HIV. That result would be directly counter to the amendment's intent, and to good public health practice.

I have one final concern about the Helms amendment. By requiring providers to disclose their HIV infection, we run a great risk of driving providers from their practices, and thus reducing access to much needed health services. We know that providers who have disclosed their infection have lost their practices. This will deprive these individuals of their livelihood while achieving no public health benefit.

The Centers for Disease Control, the agency in charge of HIV prevention in the United States, has developed guidelines based on months of research and scientific thinking. The medical community and numerous medical organizations, including the American Medical Association, have endorsed these guidelines. The Dole amendment will reinforce these guidelines through State legislation or regulation. This is the appropriate route for us to take.

I have one final concern. By imposing criminal penalties on HIV-infected health care workers, we are sending the wrong message to the American people. Our public health agencies across the country have been struggling to educate people about the risks of certain sexual behaviors and needle sharing which leads to AIDS. My fear is that the Helms amendment wrongly suggests that health care workers are a source of HIV infection. It deflects attention from where it should be focused—on the far more difficult task of changing personal activities, like sexual behavior and illicit drug use. These are the behaviors that have been well documented to lead to HIV infection.

The Dole amendment, which supports the CDC guidelines, will not fuel the misinformation and emotion surrounding this issue. The Dole amendment is sound public health policy. It is supported by the public health community and the medical community. It will protect the public, but it will not undermine current HIV prevention efforts. That is why I will vote for the Dole amendment and against the Helms amendment. That is why I believe the public will be better served by the policy and the public health message conveyed by the Dole amendment. I hope my colleagues will join me.

Ms. MIKULSKI. Mr. President, today we are addressing an issue that affects anyone who uses health care services—how to prevent the spread of AIDS in the health care setting. As we have recently seen in the tragic Florida case, there are patients who have contracted this terrible disease because a dentist failed to take proper precautions to prevent contagion. It is absolutely crucial that we take the most effective steps to ensure that this does not happen again.

Earlier this week, the Centers for Disease Control, after carefully studying this issue, released their recommendations to protect patients from contracting AIDS. The CDC guidelines are based on the best information available about how to prevent the spread of AIDS from patients to doctors, doctors to patients and patients to patients. More specifically, these guidelines address protecting patients from the spread of the HIV virus in the health care setting.

What do these guidelines say? They say that health care workers that perform surgery or other invasive procedures where HIV infection can occur should know whether they have the infection or not; that they should work with their employer to explicitly decide what procedures, if any, they can continue to perform; and that these workers should let prospective patients know what their HIV status is and let patients decide if they want to take the risks of being exposed.

The Dole-Hatch amendment takes these guidelines, and makes them law. It also requires strict penalties for workers that do not follow these precautionary guidelines exactly.

Mr. President, the Centers for Disease Control, whose sole purpose is to protect the public's health, should be setting the policy on this issue. The Congress should follow the best advice they can get, rather than what one Senator decides is politically expedient.

The Helms amendment is bad for a number of reasons. My greatest fear is that the Helms amendment will drive health care workers underground. Instead of knowing their HIV status, they will simply choose not to know. Under the Helms amendment, if they do not know, they cannot be held responsible. This, Mr. President, is a frightening proposition. I want health care workers to know their HIV status and take the proper precautions, not hide it from their patients and deny it to themselves. The Helms amendment also does not address how to prevent HIV infection from occurring in the first place. This is an irresponsible and life-threatening omission.

People who knowingly infect other people with this deadly disease should be punished. We all agree on that. However, I do not believe the Senator from North Carolina's amendment will accomplish this. I believe that his amendment will not make people safe from the threat of HIV infection, it will put them at greater risk.

Mr. President, I will vote to support a comprehensive approach to this issue which also requires disclosure of status, resolves what the HIV infected worker should be allowed to do in a health care setting, and protects the patient and the health care worker from the risk of infection. I will vote for the Dole-Hatch amendment.

VOTE ON AMENDMENT NO. 780

The PRESIDING OFFICER. All time having expired on amendment No. 781, under the previous order, the question is on agreeing to the amendment, No. 780, offered by the Senator from North Carolina. The yeas and nays have been ordered.

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 (Mr. DODD). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 135 Leg.]

YEAS—99

Adams	Ford	Metzenbaum
Akaka	Fowler	Mikulski
Baucus	Garn	Mitchell
Bentsen	Glenn	Moynihan
Biden	Gore	Murkowski
Bingaman	Gorton	Nickles
Bond	Graham	Nunn
Boren	Gramm	Packwood
Bradley	Grassley	Pell
Breaux	Harkin	Pressler
Brown	Hatch	Reid
Bryan	Hatfield	Riegle
Bumpers	Heflin	Robb
Burdick	Helms	Rockefeller
Burns	Hollings	Roth
Byrd	Inouye	Rudman
Chafee	Jeffords	Sanford
Coats	Johnston	Sarbanes
Cochran	Kassebaum	Sasser
Cohen	Kasten	Seymour
Conrad	Kennedy	Shelby
Craig	Kerrey	Simon
Cranston	Kerry	Simpson
D'Amato	Kohl	Smith
Danforth	Lautenberg	Specter
Daschle	Leahy	Stevens
DeConcini	Levin	Symms
Dixon	Lieberman	Thurmond
Dodd	Lott	Wallop
Dole	Lugar	Warner
Domenici	Mack	Wellstone
Durenberger	McCain	Wirth
Exon	McConnell	Wofford

NAYS—0

NOT VOTING—1

Pryor

So the amendment (No. 780) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 734

The PRESIDING OFFICER. The question now occurs on agreeing to amendment No. 734, offered by the Senator from North Carolina, to the committee amendment on page 59, line 7. The yeas and nays have been ordered and the clerk will call the roll.

The assistant bill clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

The result was announced—yeas 81, nays 18, as follows:

[Rollcall Vote No. 136 Leg.]

YEAS—81

Adams	Exon	Murkowski
Baucus	Ford	Nickles
Bentsen	Fowler	Nunn
Biden	Garn	Packwood
Bingaman	Glenn	Pell
Bond	Graham	Pressler
Boren	Gramm	Reid
Bradley	Grassley	Riegle
Breaux	Harkin	Robb
Brown	Hatch	Roth
Bryan	Heflin	Rudman
Bumpers	Helms	Sanford
Burdick	Hollings	Sarbanes
Burns	Johnston	Sasser
Byrd	Kasten	Seymour
Coats	Kerrey	Shelby
Cochran	Kerry	Simon
Cohen	Kohl	Simpson
Conrad	Lautenberg	Smith
Craig	Levin	Specter
D'Amato	Lieberman	Stevens
Danforth	Lott	Symms
Daschle	Mack	Thurmond
Dixon	McCain	Wallop
Dodd	McConnell	Warner
Dole	Metzenbaum	Wirth
Domenici	Moynihan	Wofford

NAYS—18

Akaka	Gorton	Leahy
Chafee	Hatfield	Lugar
Cranston	Inouye	Mikulski
DeConcini	Jeffords	Mitchell
Durenberger	Kassebaum	Rockefeller
Gore	Kennedy	Wellstone

NOT VOTING—1

Pryor

So, the amendment (No. 734) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

VOTE ON AMENDMENT NO. 781

The PRESIDING OFFICER. The question is on agreeing to amendment No. 781 offered by the Republican leader, Mr. DOLE. 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 (Mr. KOHL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 137 Leg.]

YEAS—99

Adams	Bradley	Chafee
Akaka	Breaux	Coats
Baucus	Brown	Cochran
Bentsen	Bryan	Cohen
Biden	Bumpers	Conrad
Bingaman	Burdick	Craig
Bond	Burns	Cranston
Boren	Byrd	D'Amato
Danforth	Jeffords	Pell
Daschle	Johnston	Pressler
DeConcini	Kassebaum	Reid
Dixon	Kasten	Riegle
Dodd	Kennedy	Robb
Dole	Kerrey	Rockefeller
Domenici	Kerry	Roth
Durenberger	Kohl	Rudman
Exon	Lautenberg	Sanford
Ford	Leahy	Sarbanes
Fowler	Levin	Sasser
Garn	Lieberman	Seymour
Glenn	Lott	Shelby
Gore	Lugar	Simon
Gorton	Mack	Simpson
Graham	McCain	Smith
Gramm	McConnell	Specter
Grassley	Metzenbaum	Stevens
Harkin	Mikulski	Symms
Hatch	Mitchell	Thurmond
Hatfield	Moynihan	Wallop
Heflin	Murkowski	Warner
Helms	Nickles	Wellstone
Hollings	Nunn	Wirth
Inouye	Packwood	Wofford

NOT VOTING—1

Pryor

So the amendment (No. 781) was agreed to.

Mr. INOUYE. I move to reconsider the vote.

Mr. DOMENICI. 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 Arizona.

AMENDMENT NO. 782 AND 783

Mr. DeCONCINI. Mr. President, I ask unanimous consent to make a tehcnical modification to the Helms amendment, No. 734. The modification will eliminate repetition that occurs in the bill with the amendment as agreed to, a technical modification only. It has been cleared with the Senator from North Carolina.

I submit that amendment, along with another technical amendment to amendment No. 742 previously agreed to. I send the amendments to the desk and ask unanimous consideration for their adoption en bloc.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizonia [Mr. DECONCINI] proposes an amendment numbered 782 to amendment No. 734 and an amendment numbered 783 to amendment No. 742.

The amendments considered and agreed to en bloc are as follows:

AMENDMENT NO. 734

Strike the first seven lives of amendment No. 734; insert at the beginning of the amendment, ": *Provided*, That"; and strike the period at the end of the amendment and insert in lieu thereof, a semicolon.

AMENDMENT NO. 783

Strike "$288,000,000" and insert in lieu thereof "$301,000,000".

Mr. DeCONCINI. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. CHAFEE. If I might have the attention of the distinguished manager of the bill, I would like to clarify one point in the bill with regard to the establishment of an Internal Revenue Service toll-free call answering site in Rhode Island. The House approved bill and the bill as reported to the Senate by the Appropriations Committee recommend an appropriation of $1,661,298,000 for the Department of the Treasury account, entitled "Processing Tax Returns and Assistance." It is my understanding that House Report 102–109 expresses that body's intention that from the total appropriation for that account, $3,800,000 shall be made available for a toll-free call answering site in Rhode Island.

Mr. DECONCINI. That is correct.

Mr. CHAFEE. I should like to clarify with the distinguished manager that while a call answering site is not mentioned in the Senate report language, it is not the intention of the Senator to prohibit the use of funds in the aforementioned account for such a purpose.

Mr. DECONCINI. That is correct.

Mr. CHAFEE. I should like to clarify further the Senate's intention that the Department of the Treasury should attempt to accommodate the report language of the House with respect to the establishment of a toll-free call answering site in Rhode Island, within the funds that have been allotted for such a purpose.

Mr. DECONCINI. That is correct.

Mr. CHAFEE. I thank the distinguished Senator from Arizona for clarifying these points.

L.A. GANG ANALYSIS CENTER

Mr. SEYMOUR. Mr. President, I see the distinguished senior Senator from Arizona on the floor and I wish to yield to him so that he may respond to the following question: Is it my understanding that the committee recommends that ATF establish a link to the Los Angeles County sheriff's system as part of its development of its gang analysis center?

Mr. DECONCINI. The Senator from California is correct. Given the development and effectiveness of the gang reporting, evaluations, and tracking [GREAT] system, we can most effectively establish a gang analysis center in ATF by establishing a direct link with the GREAT system.

Mr. SEYMOUR. Thus, law enforcement agencies could then use ATF's center to obtain information that is actually based in the GREAT system.

Mr. DECONCINI. Yes, that is true. As the Senator from California knows, as outlaw gang activity has spread across the Nation, more and more municipalities are seeking the kind of information collected in the GREAT system. ATF's gang analysis center will help meet the growing demand for this information.

Mr. SEYMOUR. And finally, I am aware that the GREAT system has re-

strictions on accessing their system for the purpose of updating or inputing information. Is it the Senator from Arizona's understanding that before ATF is able to access the GREAT system, guidelines will be developed for purposes of updating and entering information into the GREAT system?

Mr. DECONCINI. Yes, that is my understanding. In fact, in the committee report, we state that before any funds are to be expended, we expect ATF to submit a comprehensive plan on the center that includes how ATF will integrate and use information from other law enforcement agencies. It is my understanding that ATF will work with the Los Angeles County sheriff's office to ensure that there is agreement on how information from the GREAT system will be used.

AMENDMENT NO. 732

Mr. GLENN. Mr. President, I rise today to discuss the questions that surround the DeConcini-Domenici amendment to H.R. 2622, the Treasury-Postal Service appropriations bill. This amendment proposes that Congress could save $180 million on revenue forgone by calculating the subsidy for nonprofit third-class mail as though all such mail were letter-shaped instead of consisting partly of flat-shaped pieces. Then a nonprofit organization could choose either to switch to letter-shaped mailers or continue to send flat-shaped pieces, only at a higher rate.

This amendment was devised by the Postal Rate Commission. The Commission's proposal would severely, by 4 cents per piece, increase the rate for flats, in contrast to their position on the recent rate increase.

This amendment was not subject to public hearings. It was not even tested in hearings before the Postal Rate Commission. In fact, the amendment bases itself on a Commission report that was kept embargoed so long that analysis could not be made, even by the Postal Service. Yesterday, I received an analysis from the Postal Service. I received a letter from Postmaster General Anthony M. Frank, who informs me that the methodology used to calculate this $180 million savings may have inflated the amount by as much as $80 million.

The sponsors of this amendment portrayed it as a rather painless approach, saying that only 20 percent of nonprofit third-class mail would be affected and that mailers can easily alter their practices. The Postmaster General reports that if the 41-percent rate increase embodied in this amendment is enacted, compounded with the 46-percent nonprofit mail rate increase of the recent case, certain nonprofit mailers will sustain a cumulative rate increase of 106 percent in less than a year. The Postmaster General's letter suggests that the amendment would impact a great number of nonprofit mailers but how many remains a question.

In this period in which we celebrate our Thousand Points of Light, I have to ask the question of whether we now threaten to extinguish some of these organizations with this amendment. As chairman of the Senate Governmental Affairs Committee, I would like to give some specific examples of what I am hearing:

The Interpreter is the official program journal of the United Methodist Church. It is issued eight times a year to pastors and leaders of 380,000 congregations and it incurred a 49-percent increase in its mailing rates last February. Enactment of the Senate provision would increase its costs to $385,000—double its 1990 mailing budget.

AUSA News is a publication of the Association of the U.S. Army. As a result of February's rate case, it reduced its frequency from monthly to 10 issues this year. It estimates its added costs at $50,000 with enactment of this amendment, which could lead to further cutbacks.

The Arkansas Baptist Newsmagazine, a weekly from 1902 until 1989, is now issued biweekly. It estimates that the Senate provision could run its costs up by $1,800 an issue.

As this amendment goes to conference, I ask that the conferees consider carefully the questions that the Postmaster General raises, for we deal with the fate of the organizations that truly demonstrate America's community spirit.

Mr. President, I ask that Mr. Frank's letter be printed in the RECORD at this point.

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

THE POSTMASTER GENERAL,
Washington, DC, July 17, 1991.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I want to bring to your attention the concerns of the Postal Service with the appropriation for revenue forgone on preferred postage rates included in H.R. 2622, the Fiscal Year 1992 Postal Service appropriations bill. The House version of the bill contained the full $649 million appropriation requested by the Postal Service, while the Senate version reduced this amount to $383 million. In view of the importance of this matter, we believe it is incumbent on us to advise you of our views regarding this reduction and the assumptions used to justify it.

By far the greatest share of the gap between the House and Senate figures, some $180 million, is based on savings which presumably could be obtained by calculating the subsidy for nonprofit third-class mail as though all such were "letter-shaped" instead of consisting partly of "flat-shaped" pieces. Our review of the methodology for this calculation, suggested originally by the Postal Rate Commission, leads us to believe that the savings obtainable through this method are inflated, perhaps by as much as $80 million. While the asserted intent of the Commission's methodology is to provide flats with a subsidy equal to that granted to letters, the actual result is that flats are subsidized at a lower rate. In fact, the average nonprofit flat would receive a subsidy of 2.7 cents (or 33 percent of cost), compared to a subsidy of 3.1 cents (or 37 percent of cost) for the average nonprofit letter. Equalizing the level of subsidy for flats and letters would cause a significant reduction in the prospective savings to be obtained from this measure.

We stress in addition that it is impossible to forecast with any specificity the ulitmate impact of this measure on postal volumes or revenues. The 41 percent increase in the rates for nonprofit flats anticipated in the Senate version, compounded with the 46 percent rate increase such mail absorbed in the last postal rate case, would produce a cumulative increase of 106 percent in less than a year. It is unclear whether this increase would have a disproportionate impact on particular types of nonprofit organizations, although we note that the current volume of nonprofit flats includes numerous magazines and newsletters published by colleges, universities, and other educational organizations. We expect that at least the one-sixth of flat-shaped mail which is composed of such publications would migrate into nonprofit second-class mail, increasing the volumes (and subsidy) for that class. The response of other types of nonprofit mailers is more difficult to predict.

As a further matter, we note that the Senate amendment specifically commands the Governors of the Postal Service to reconcile any Fiscal Year 1992 funding shortfall which may result from this legislation against future year appropriations requests. We are concerned that the potential magnitude of the sums involved, when combined with reconciliation amounts falling due from past years, may place the Congress in an even tougher dilemma between unaffordable subsidy levels and intolerable rate increases next year or the next. We are also troubled by the implicit assumption in the Senate language that the rates for nonprofit flats would be adjusted in a future rate proceeding before the Commission. Indeed, we strongly object to any proposal, such as this, which would restrict the prerogative of the Governors to take necessary action, including the adjustment of preferred postage rates, in response to a shortfall in the funding for revenue forgone.

Finally, we wish to state our explicit disagreement with the assumption in the Senate bill that the amount requested for revenue forgone can be reduced by a further 10 percent, or $65 million, in light of a reported decrease in mail volume after the most recent rate case. To the contrary, our full request for $649 million was developed following the Commission's recommendations, and incorporated an even larger drop in volume than that originally estimated by the Commission. Volumes for preferred-rate mailers have not deviated significantly from our projections, and there is accordingly no basis in fact for the further reduction in funding contemplated in the Senate version.

We appreciate the budgetary constraints which compel Congress to seek a reasonable method to limit the appropriation for revenue forgone. We respectfully suggest, however, that the Senate version of H.R. 2622 does not resolve this problem.

Sincerely,

ANTHONY M. FRANK.

Mr. LAUTENBERG. Mr. President, I am very pleased that this bill includes at my request $500,000 for a demonstration program that promises to have a real impact on the problem of vehicle theft in New Jersey.

Around the country, vehicle theft has increased by 42 percent between 1985 and 1989, to over 1.5 million offenses per year. The total value of stolen vehicles nationally now exceeds $8 billion per year.

The problem in New Jersey is particularly serious. Newark, NJ, has the worst auto theft rate in the country, and several other New Jersey cities are in the top 10. Last year, according to the State's Uniform Crime Report, there were 72,626 motor vehicle thefts reported in New Jersey, or 199 thefts every day.

One of the reasons why the auto theft epidemic has hit New Jersey so hard is that organized rings of car thieves are stealing vehicles for export to foreign countries, and are using New Jersey's ports to do so. There is a great demand for vehicles in many overseas locations, such as South America, the Caribbean, and Africa, and law enforcement officers report that prices for cars abroad may be three times higher than in the United States. In some cases, stolen cars are used to repay drug dealers.

The scope of the international trade in stolen vehicles is striking. According to the FBI, one in five vehicles on the docks waiting for Customs clearance in some Caribbean countries show clear signs of having been stolen and shipped from the United States. For vehicles worth over $15,000, the rate is nearly four out of five. It is an outrageous situation and must not be tolerated.

Mr. President, the Customs Service has been working hard at intercepting stolen vehicles before they are shipped abroad. Yet this is a difficult task, and Customs agents lack the resources they need to do the job right. In the New Jersey-New York seaport area, Customs Service agents are able to inspect only 16 percent of all vehicles manifested for export that fall in the high-risk category.

Mr. President, the vehicle theft interdiction demonstration program funded in this bill should allow the Customs Service to raise the inspection rate significantly. Agents also will receive additional training and equipment, which should enable them to do a better job of locating stolen vehicles. I am hopeful that these enhanced efforts will reduce the number of stolen vehicles shipped from the ports, lead to apprehension of members of theft rings exporting stolen autos, and develop and evaluate techniques for detecting stolen autos.

Mr. President, this project was developed with the cooperation of the Customs Service, and I want to thank the Service for its helps. I also appreciate the Service's assurance that money for this project will not be taken from the budget of the Customs office serving New Jersey.

Furthermore, I want to note that the committee report encourages the Customs Service to step up its efforts to address auto theft around the country. While the epidemic of auto thefts is particularly serious in the New Jersey area, it infects the Nation as a whole, and Customs needs to increase its attention to the problem in several areas.

In fact, Mr. President, the national scope of the auto theft problem requires a multipronged response that goes well beyond interdiction of stolen vehicles. Recently, the Senate approved my legislation, the Motor Vehicle Theft Prevention Act, as an amendment to the crime bill. That legislation would reduce vehicle theft and enable the police to stop cars that are likely to have been stolen, by establishing a framework for a consent-to-stop program. Under that program, vehicles owners may voluntarily put decals on their car that give law enforcement officials the right to stop their cars if they are operated under certain conditions, such as late night hours, during which their vehicles are not normally driven.

It is also important that vehicle manufacturers take steps to make cars more theft-resistant. Many law enforcement officials have told me that certain types of cars are extremely vulnerable to thieves, because of the way certain components, such as their steering columns, are constructed. It is important that manufacturers make adjustments to such components, to stop making life so easy for auto thieves.

Another possible approach to reducing theft is to strengthen the Federal law that requires manufacturers to mark certain car components with identification numbers. I have been working with a coalition of law enforcement, insurance, and other groups to look into the possibility of steps to expand and improve the effectiveness of that law.

Together, Mr. President, these steps can make a real difference in our effort to reduce auto theft. And I would welcome any other ideas for legislation or other steps that can be taken to address the problem. It is time to get serious about auto theft, and I want to do everything I can to help.

On another matter, Mr. President, I am very pleased that the Senate approved the amendment offered on Monday by the distinguished Senator from Connecticut, which I cosponsored, which gives the President the authority to adjust the recently approved locality pay for New York area FBI agents so as to include agents serving in adjoining areas. This could be important for many agents who serve in the Atlantic City FBI office and other areas of my State.

Mr. SEYMOUR. Mr. President, I rise to express my support for H.R. 2622, the treasury/postal appropriations bill as amended by the Senate Appropriations Committee.

The legislation we have before us is a reflection of the tough fiscal times we presently face. The funding recommendations are below the fiscal year 1992 section 602(b) budget authority as well as the House-passed bill. In short, this legislation reflects responsible, rather than reckless, Federal spending.

But with tough budget times come tough decisions, decisions on what programs place a higher priority in our national agenda. And the Appropriations Committee has made tough, but wise decisions.

This legislation reaffirms our commitment to assist State and local governments rid our streets of illegal drugs and violent crime. It contains modest but much needed increases in funding for the Bureau of Alcohol, Tobacco, and Firearms [ATF], including the highly successful Armed Career Criminal Apprehension Program. ATF plays a vital role in Federal Law enforcement efforts and the armed career criminals program has been highly successful in apprehending violent offenders. For those who doubt the link between drugs and violent crime, it is important to note that more than 80 percent of the violent criminals caught under this program have direct involvement in illegal drug trafficking.

The committee's recommendations also demonstrate the need to expand our drug interdiction efforts. The U.S. Customs Service and Border Patrol continue to represent our first line of defense in putting a stop to the flow of illegal drugs, to get the drugs from the hands of traffickers before they get them in the hands of addicts. H.R. 2622, as amended, correctly recognizes that our strongest stand must continue to be the southwest border region, and has included funding increases for more customs investigators, and other resources to strengthen our air interdiction efforts.

This legislation also directs funds from the special forfeiture fund under the Office of National Drug Control Policy to be used for hiring 100 additional U.S. Border Patrol Agents for the southwest border. I firmly believe that spending resources to stop the flow of illegal drugs and illegal aliens is more cost-effective in terms of both dollars and lives than waging a drug war in the streets and housing criminal aliens in our jails and prisons.

Finally, Mr. President, I wish to commend the committee, especially the distinguished senior Senator from Arizona, for recognizing the Federal Government's responsibility in efforts to combat criminal gang activity. It is

no secret that the rise of criminal gangs in my State of California, as well as Senator DECONCINI's home State of Arizona, is directly related to the unfortunate rise in drug trafficking along the southwest border, as well as in communities across the Nation.

It's about time we recognized today's criminal gangs for what they are: Ruthless bands of organized criminals that make Capone's thugs of the Roaring '20's look like a Boy Scout troop.

Stopping these organized thugs requires organization as well, a coordinated plan of action from all levels of law enforcement: Federal, State, and local. And I am pleased that this legislation takes steps to promote coordinated activity. Central to this effort is funding that will assist ATF in establishing a gang analysis information center, a comprehensive data center that tracks patterns of gang activity and the kinds of crimes involved for use by all law enforcement agencies.

Presently, the Los Angeles County Sheriff's Department operates the most comprehensive data base on gang activity, known as the gang reporting, evaluation and tracking system [GREAT]. This system has been extremely beneficial to many municipal, county, and State law enforcement agencies across the country who have been besieged by gang activity.

So great is the GREAT system that the demand for access to this information has far outstripped the ability of the Los Angeles County sheriffs to supply it. It is my understanding that creation of a gang analysis center within ATF will help to make this information available to all law enforcement agencies.

I commend the senior Senator from Arizona [Mr. DECONCINI] and the distinguished Senator from New Mexico for their leadership on this very important issue. This legislation represents an important step in our efforts to develop a coordinated strike against criminal gangs, and I look forward to working with Senator DECONCINI in developing comprehensive antigang legislation.

Mr. DECONCINI. Mr. President, we are ready for final passage.

The PRESIDING OFFICER. If there are no further amendments, the question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

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

The 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 91, nays 8, as follows:

[Rollcall Vote No. 138 Leg.]

YEAS—91

Adams	Garn	Mikulski
Akaka	Glenn	Mitchell
Baucus	Gore	Moynihan
Bentsen	Gorton	Murkowski
Biden	Graham	Nickles
Bingaman	Gramm	Nunn
Bond	Grassley	Packwood
Boren	Harkin	Pell
Bradley	Hatch	Pressler
Breaux	Hatfield	Reid
Bryan	Heflin	Riegle
Bumpers	Helms	Robb
Burdick	Hollings	Rockefeller
Burns	Inouye	Rudman
Byrd	Jeffords	Sanford
Chafee	Johnston	Sarbanes
Cochran	Kassebaum	Sasser
Cohen	Kennedy	Seymour
Conrad	Kerrey	Shelby
Cranston	Kerry	Simon
D'Amato	Kohl	Simpson
Danforth	Lautenberg	Specter
Daschle	Leahy	Stevens
DeConcini	Levin	Thurmond
Dodd	Lieberman	Wallop
Dole	Lott	Warner
Domenici	Lugar	Wellstone
Durenberger	Mack	Wirth
Exon	McCain	Wofford
Ford	McConnell	
Fowler	Metzenbaum	

NAYS—8

Brown	Dixon	Smith
Coats	Kasten	Symms
Craig	Roth	

NOT VOTING—1

Pryor

So the bill (H.R. 2622), as amended, was passed.

Mr. DECONCINI. 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.

Mr. DECONCINI. I move that the Senate insist on its amendments to H.R. 2622, and request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. DECONCINI, Mr. BYRD, Ms. MIKULSKI, Mr. KERREY of Nebraska, Mr. DOMENICI, Mr. HATFIELD, and Mr. D'AMATO conferees on the part of the Senate.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, SUNDRY INDEPENDENT AGENCIES, COMMISSIONS, CORPORATIONS, AND OFFICES APPROPRIATION ACT, FISCAL YEAR 1992

The PRESIDING OFFICER. The Senate will resume consideration of H.R. 2519, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2519) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire [Mr. SMITH].

AMENDMENT NO. 784

(Purpose: To transfer funds from special interest grants to medical care for veterans)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH], proposes an amendment numbered 784.

Mr. SMITH. 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:

Beginning after the word "notwithstanding" on page 31, line 11, strike all through line 18 and insert in lieu thereof the following: "any other provision of this act to the contrary, $72,800,000 of the funds appropriated pursuant to this paragraph shall be expended for medical care by the Veterans Health Administration."

Mr. SMITH. Mr. President, I rise today to offer an amendment that would cut $72.8 million in earmarked special purpose grants included in the annual contributions for the assisted housing section of this bill and transfer that money to the Veterans Health Administration for medical care.

This Department, the Department of Veterans Affairs, Mr. President, operates the largest medical care delivery system in the country. It has 172 hospitals, 32 domiciliaries, 126 nursing homes, 139 outpatient clinics, and all of these do an outstanding job and can always use funding.

The appropriation provided in this legislation provides for medical care and treatment for eligible beneficiaries in VA hospitals, nursing homes, outpatient clinic facilities, contract hospitals, State home facilities, and on a grant basis they contract community nursing homes and through the hometown outpatient program, an extensive established program that I believe is deserving of these additional funds.

Last year in a letter to Congress, Secretary Kemp made the following statement:

One of the principal purposes of the HUD Reform Act was to restore the public's faith in this Department's integrity by ensuring that HUD funds would be awarded competitively on the basis of clear and objective criteria. The administration continues to believe very strongly that the earmarking of funds to specific entities is inconsistent with the requirement for fair and open competition contained in the HUD Reform Act.

Mr. President, this legislation does earmark funds. The special purpose

grants that my amendment would cut are awarded with little-to-no review from authorizing committees in Congress. They are not competitively awarded on the basis of clear and objective criteria. The grants are Senate add-ons that were not included in the administration's budget request nor were they in the House-passed measure.

I want to take a moment to let my colleagues know that I am not singling out any particular project and I am not singling out any particular State, and I am not singling out any particular Senator. My amendment would cut every special purpose grant in the bill. Some of the grants, I am sure, are worthy. There is $500,000 for the Newark Public Library to develop literacy programs in public housing developments. I am sure that is a worthwhile project. My question to my colleagues is what about $500,000 for a public library in Boston or Manchester, NH, or Dallas, TX, or Sacramento, CA, or Boise, ID? How did we determine that it should be Newark rather than some of those other cities? The point is we did not. We simply placed it in there; somebody placed it in there because of a particular happenstance, to be in the right place at the right time.

This is clearly wrong. No priority. No competition. Nothing. Just simply a big slush fund of money. This goes to Newark because somebody says it goes to Newark. Period.

The point is if you are a poor kid in some city—Anyplace, U.S.A.—and you need to use a public library, the only way you are going to get $500,000 to improve that library is if you have somebody on the conference committee somewhere who says we ought to have the money. Period. That is not fair to the poor kids in all the other cities in the country who ought to be in line for competition.

On the surface, as I say, it sounds good to be able to say. And there is always a good, worthwhile project with a good-sounding name, and that sounds wonderful. But the point is the process is terrible. It is unfair. It is unjust. And it is not helping the people in the country that it is designed to help.

These funds were not requested by the Secretary of Housing and Urban Development. As a matter of fact, on the contrary, he did not want those funds in there.

Who is to say that this particular project is more important than some other project? If we do not take the time to establish objective standards here in the U.S. Senate, we will never know if our money, the taxpayers' money, is being wisely spent. It is not being done.

The list is long. I am not going to read the list. But it is a long list of various projects. Many of them sound wonderful. Most of them sound wonderful because that is why they get in there, because they sound wonderful. Some tend to be outrageous, with no priority whatsoever in terms of other cities or in terms of which project may be more important than some other project.

My amendment very simply transfers these funds, totaling $72.8 million, to a program that I do know uses our tax dollars wisely: veterans' medical care. I think every Senator has received a letter from a category B or C veteran that has been delayed or denied health care. Here is a chance to do something about it. Most veteran organizations believe that $14.9 billion is needed in fiscal year 1992 to provide adequate health care for our Nation's veterans.

Under the committee amendment, funding for VA medical care would rise to $13.53 billion, and I commend the committee for their attention to this matter. My amendment is a modest attempt to improve this figure. If adopted, funding for VA medical care will rise to slightly more than $13.6 billion.

Mr. President, my amendment offers a clear opportunity to set some rational spending priorities. It is a chance to put the interest of veterans above the special interests. And I ask my colleagues to think about it, give it some thought, in terms of the whole reform needed in this whole process. Ask yourself: Are the criteria correct; are these the criteria that we want to determine who gets money, or who says that a poor kid in Newark, NJ, is more important than a poor kid in Sacramento, CA?

Probably one Senator or one Congressman put this in the bill with no vote, no authorization, nothing. That is wrong. Pure and simple. It is wrong. So I want to change that process.

I am going to be speaking out on the floor of the U.S. Senate over the next several months on this issue. I intend to bring it up over and over and over again on these appropriation bills, so you might as well get used to it. Because the process is wrong. It has to be changed. It must be changed.

I also know how difficult it is to make changes around this place when people are comfortable with the way we do business. Maybe we are comfortable with it, but I do not think the American people are comfortable with it because the process is inherently unfair. The American people know it and we ought to respond to that.

In view of the fact that I have taken a numbers count here on this amendment, I have come to the conclusion that we do not have the votes to adopt such an amendment. But I do want to point out to the chairman of the committee, as well as all the Appropriations Committees, as well as to you, Mr. President, that we need to change this process and, again, I intend to bring it up over and over again. My hope is that we will have enough Senators to come forth and say that this is a bad process, we ought to change it. And if we are not willing to change it here within the system, then we ought to at least move to perhaps a line-item veto or something where somebody has the authority to reach in and excise out these projects which are not approved by anyone.

Some would call it pork. Some of these projects are not pork in the sense that they are bad projects, but what I call pork are projects that are not authorized in any way but simply appear suddenly in somebody's bill.

And in many cases, Mr. President, you will find that these items appear when the House legislation comes into conference and companion legislation comes in from the Senate, and the two sides sit down and neither committee had a project in. And when it comes out of conference, there appears the project.

That is not a good way to do business. It is not a good way to be accountable to the taxpayers of America. I am not going to be a party to it. I am not going to be a part of it. And if I offend some people, so be it.

But I am going to change this process if it takes me all these years to do it. I am going to point it out over and over and over again, until I get 51 people in the U.S. Senate who agree with me so we change it. That is my goal.

So, Mr. President, in view of the fact I think I have made my point on this matter, at this time, I will withdraw my amendment and inform the Senate that at some point in the very near future, I will bring this matter up again.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator has a right to withdraw his amendment.

The amendment (No. 784) was withdrawn.

Ms. MIKULSKI. Mr. President, I thank the Senator from New Hampshire, first of all, for his remarks, really, and in bringing to the attention of the Senate his goal in funding projects that are merited to make sure that we get a dollar's worth of services for a dollar's worth of taxes, and that we put our money of the taxpayers' where it will do the most good.

I assure the Senator from New Hampshire that we did use some criteria. We met the general criteria for eligibility for funding under the Community Development Block Grant Program. We took a look to make sure it benefited low-to-moderate-income persons, or if it would aid in the prevention or elimination of slums and blight; and second, that the project demonstrated some type of non-Federal support, either financial or in kind, to guarantee that there is genuine local interest and that we are just not funding grant junkies.

I want to acknowledge that the Senator wants to press for reform. We look forward to working with him on fiscal

responsibility and reform measures. I thank him for his cooperation in withdrawing the amendment, though I know he does not withdraw his intent.

Mr. SMITH. I thank the chairman.

Mr. GARN. Mr. President, I thank our colleague from New Hampshire for his consideration and cooperation. I understand his point, and many of the things he has said, I agree with. But the nature of the debate would take some time, so I appreciate his cooperation in withdrawing his amendment.

AMENDMENTS NO. 785 THROUGH 793

Ms. MIKULSKI. Mr. President, I now send nine amendments to the desk and ask unanimous consent that they be considered and agreed to en bloc, and that the motions to reconsider the votes be laid upon the table en bloc.

They have been cleared on both sides. They do not affect our 602(b) allocation.

There is an amendment that I have making technical corrections to section 520, which is to prevent escalation of drug prices to VA as a consequence of a provision of the Budget Act; a crucial amendment.

A McCain amendment allowing EPA to set aside one-half of 1 percent of construction grants for Indian tribes; a DeConcini amendment requiring the GAO to study the FHA Mutual Mortgage Insurance Fund; another DeConcini amendment providing that the Pascqua Yacqui Indian Tribe is considered as residing on a reservation; a Moynihan amendment transferrring $2.9 million from EPA to the National Acid Precipitation Assessment Program; a Cranston-Riegle amendment amending the Cranston-Gonzales Housing Act to allow HUD-approved entities to serve as delegated processors under HUD's Multifamily Mortgage Insurance Program; a Murkowski-Stevens amendment to create a new regional office for EPA in Alaska; a Cranston amendment extending FHA-VA reciprocity provisions on property appraisals for 12 months; and a Mikulski amendment providing $1 million to start up the Chemical Hazards Safety Board, as authorized by the Clean Air Act amendments.

I think they have been cleared on both sides, and that there is no objection to the amendments.

Mr. GARN. Mr. President, I have no objection.

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

The clerk will report the amendments.

The legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI] proposed amendments en bloc numbered 785, 786, 787, 788, 789, 790, 791, 792, and 793.

The amendments agreed to en bloc are as follows:

AMENDMENT NO. 785

Beginning on page 104, line 17, strike all after "Sec. 520." through line 2 on page 105, and insert in lieu thereof the following:

"Notwithstanding any other provision of law,—

"(a) prices for drugs and biologicals paid by the Department of Veterans Affairs, and prices for drugs and biologicals on contracts administered by the Department of Veterans Affairs, shall not be used to calculate Medicaid rebates paid by drug and biological manufacturers; and

"(b) the Secretary of Veterans Affairs shall attempt to negotiate new contracts, or renegotiate current contracts, for drugs and biologicals, including those contracts for drugs and biologicals utilized or administered by the Department of Veterans Affairs which are listed in Federal Supply Classification (FSC) Group 65 of the Federal Supply Schedule, with the view toward achieving a price comparable to, or lower than, the price charged the Department of Veterans Affairs by the manufacturer on September 1, 1990, increased by the fiscal year 1991 medical consumer price index, as determined by the Secretary; and

"(c) the Secretary shall provide a report by June 30, 1992, to the House and Senate Veterans' Affairs Committees, the House and Senate Appropriations Committees, the House Energy and Commerce Committee, and the Senate Finance Committee, on the percentage of price increase to the Department from September 1, 1990, to a date 60 days prior to the date of the report, for each drug and biological listed in FSC Group 65."

AMENDMENT NO. 786

Page 68, line 22, before the last semicolon, insert: , "and from which funds up to one-half of 1 percent may be made available by the Administrator for direct grants to Indian tribes for construction of wastewater treatment facilities."

AMENDMENT NO. 787

SEC. . GENERAL ACCOUNTING OFFICE STUDY OF FHA MUTUAL MORTGAGE INSURANCE FUND.

The General Accounting Office (GAO) shall prepare and submit to Congress no later than April 1, 1992, a study of the actuarial soundness of the Federal Housing Administration's single family mortgage insurance program and the solvency of the Mutual Mortgage Insurance Fund (MMIF). The study, using the latest reliable data available, shall consider the extent to which the following factors were analyzed by the 1990 Price Waterhouse study of the MMIF, how the analysis of these factors might be improved, and how any appropriate modifications to the study's analysis of these factors or other factors identified by GAO would affect Price Waterhouse's conclusions regarding the actuarial soundness and the net worth of the MMIF and the ability of the MMIF to meet the capital ratio targets established in the Omnibus Budget Reconciliation Act of 1990. These factors include:

The actuarial performance of loans insured by the FHA during the years considered by Price Waterhouse, including the 1986 and 1987 books of business. Specifically, the overall default rates and claims (loss) experience of the loans considered and what that experience implies regarding the actuarial soundness of the MMIF.

The effect of the Mortgagor Equity rule issued by HUD, which limits the amount of closing costs that can be financed with a FHA mortgage to 57% of the total amount of allowable closing costs, on the actuarial status of the MMIF, default rates of FHA borrowers, the relative impact on purchasers of homes at various price levels, and the ability of potential FHA borrowers to purchase homes.

The effect of underwriting changes made by the Federal Housing Administration since 1986.

The effect of increasing the maximum mortgage amount that can be insured under the FHA single family mortgage insurance program.

The impact on the propensity of borrowers with mortgages currently insured by the FHA to refinance their existing mortgages with FHA insurance, given the annual premium requirements established by the Omnibus Budget Reconciliation Act of 1990, and the consequences for the actuarial soundness of the MMIF of a policy to allow "streamlined refinancings" whereby the borrower would not be required to pay an annual premium.

FHA's accounting method for deferring and amortizing the MMIF single-family one-time premium revenue.

The valuation of delinquent loans for loan loss reserve accounting purposes.

Assumptions regarding the rate of home price appreciation.

AMENDMENT NO. 788

At the appropriate place in the bill, insert the following new undesignated paragraph:

For purposes of the United States Housing Act of 1937, members of the Pascua Yaqui tribe who reside in Guadalupe, Arizona, shall be considered (without fiscal year limitation) as residing on an Indian reservation or other Indian area.

AMENDMENT NO. 789

On page 64, line 24, immediately after the colon, insert the following: "*Provided further*, That not less than $2,900,000 shall be made available, by transfer to the Council on Environmental Quality Management Fund, for use by the Office of the Director of the National Acid Precipitation Assessment Program in implementing the requirements of section 103(j) of the Clean Air Act, and of such amount transferred, not less than $1,400,000 shall be available only for implementing section 103(j)(3)(B) of the Clean Air Act:".

Mr. MOYNIHAN. Mr. President, the National Acid Precipitation Assessment Program [NAPAP] was authorized by Congress in Public Law 96-294 in 1980 to conduct scientific, technological, and economic analyses of the acid precipitation causes and effects and to evaluate the available options for its control.

In 1990 NAPAP reported that acid rain acidified at least 800 lakes and 2,200 streams in the Eastern United States, and that at least 200 more would be acidified over the next decade without any changes in controls. Acid rain also affected high elevation forests, substantially reduced visibility in the Eastern United States, contributed to corrosion of stone and metal structures, and may have caused human health problems. NAPAP also reported that reducing SO_2 emissions by 10 million tons below 1985 levels would halt further acidification of lakes and streams and allow many of the acidified waters to recover.

The NAPAP Oversight Review Board, a group of highly regarded independent

reviewers, reported that the scientific research was of the highest quality, was critical to an adequate understanding of the acid deposition phenomenon and its control, and should serve as a model for other complex environmental problems faced by society. The Board also found, however, that insufficient attention was paid to the assessment process, and to communicating the findings of the program to decisionmakers in Congress, the administration, and the public. More important, however, was that NAPAP put the facts on the table—especially in the scientific literature that guides our experts to their conclusions. In response, we crafted a bill that reduced SO_2 emissions by 10 million tons below 1980 levels, employing a unique trading scheme for emissions allowances, which the economists tell us will lead to the lowest possible cost for the reduction. Paul Portney, an economist for Resources for the Future, has gone so far as to predict that the acid rain provisions of the Clean Air Act Amendments of 1990 will be the only cost-effective title of the bill, and then only because emissions trading will be cheaper than command-and-control approaches used elsewhere. This bill system could not have been designed without NAPAP data.

At this time, we must view this approach as what scientists call a null hypothesis—it is assumed to be correct unless proven otherwise. But we must conduct the experiment in order to make progress in protecting the environment. We cannot simply declare that we were perfectly correct. NAPAP was scheduled to slip quietly away after 1990. But this is exactly the time to continue the work done by this unique program; to make sure that the data are gathered to test this bold experiment, to see if it is a model for things to come, and to tell the result to Congress and the public. With this mission in mind, we reauthorized NAPAP in the Clean Air Act Amendments of 1990.

Unfortunately, our enthusiasm for NAPAP is not apparently shared by some of the participating agencies. The report required by Congress on how NAPAP plans to coordinate acid rain research is already 2 months late. And the reason is that at least some of the six Federal agencies that make up the NAPAP Task Force find it hard to agree to work together to conduct the experiment.

NAPAP was authorized to meet three primary goals: First, to coordinate the research of the participating agencies and to submit coordinated budget requests; second, to identify critical assessment gaps and to fill them using expertise available in the scientific and economic professional communities; and third, to report to Congress on program results in a form readily understandable by the public. Thus far, the six participating agencies have seen fit to recommend that each contribute $171,000 to the Office of the Director of NAPAP to accomplish these goals—at least one agency has already declined to pay anything. This is wholly inadequate to accomplish these goals. The task force further proposes not to allow NAPAP to fill critical gaps, that all work except coordination and reporting be done by one of the participating agencies. But what work will be done by the agencies as part of NAPAP? No one will say.

For this reason, I am offering an amendment to H.R. — the appropriations bill for VA, HUD, and independent agencies directing EPA to fund activities in the NAPAP office of the Director to accomplish the goals of section 103(j) of the Clean Air Act. It is not my intention that this appropriation preclude the proposed ageement of the other participating agencies to contribute $171,000 in fiscal year 1992 to the operation of the office of the Director. It is my intention that the office of the Director use at least $1,400,000 of these funds to identify critical assessment gaps and to fund scientists, economists, and statisticians in our best institutions to fill these gaps.

It is also my intention that the Director of NAPAP also begin to develop a strategy to communicate effectively with the public about NAPAP's ongoing activities and critical findings as they become available, in a form that is readily accessible and understood by the typical citizen. And, it is my intention that the office of the Director continue and expand the activities of the oversight board, to include advising the office of the Director on the prioritization of studies to fill critical information gaps.

Most important, I believe that whenever NAPAP reports to Congress on interagency findings, that these findings should include majority opinions that represent the best available consensus of the task force agencies, but that they also ought to contain dissenting or concurring opinions from any participants that cannot, in good conscience, agree with the majority. It is important to remember that the discovery and acceptance of scientific understanding does not occur by majority vote. Over time, the overwhelming weight of data persuade us as to the correctness of the scientific point of view. In the meantime, we must be willing to weigh conflicting evidence, provided that it is based on logical conclusions leading from high-quality data applied to clearly stated axioms.

It also is important to remember that perfect knowledge does not devolve only to NAPAP scientists by an act of Congress. In my experience as Director of the Bureau of Labor Statistics, I learned that it took decades to develop accurate indicators of the conditions in the Nation's work force. But perseverance of these dedicated public servants paid off, and now we have accurate and adequate statistics with which to make important decisions in this area. I fully expect a similar situation in arriving at the true costs and benefits of controlling air pollution. But that is all the more reason to start immediately.

The strength of NAPAP is that it brings together the expertise of a number of the Nation's agencies with environmental and natural resource management missions to provide the very best assessment possible of our progress toward reducing environmental damage from acid deposition at the lowest possible cost to society. I fully expect that EPA will play a lead role in analyzing the regulatory costs and environmental benefits of the Clean Air Act Amendments of 1991. But I also expect the Department of Energy to bring a different viewpoint and expertise to the calculation of the costs of SO_2 reduction, the Departments of Agriculture and Interior to bring to bear their expertise and different points of view with respect to our success in protecting forests, crops, and wildlife, and NOAA to bring to bear their expertise and points of view with respect to the atmosphere and oceans. I very much suspect that a complete consensus on the environmental results, costs, and benefits of NAPAP by all of these organizations would represent a lowest common denominator that offers us little to help us know whether we are on the right track, or whether adjustments are necessary.

Finally, I would ask the participants in NAPAP Task Force not to think of the acid rain provisions in the Clean Air Act Amendments of 1990 as a test that is passed with pride or failed with shame. The Congress, working with the administration, made an informed decision based on an unprecedented amount of scientific and economic information about a complex environmental problem. Arguably, NAPAP findings suggest that a more modest reduction in SO_2 emissions, say 8 million tons, would have adequately protected surface waters at a lower cost. And arguably, faster action could reverse the effects of acid deposition more quickly. It is unlikely, in retrospect, to have been a perfect decision. The only shame would be to fail to continually assess the results of the process in order to increase the efficiency and effectiveness of our efforts to protect the environment.

AMENDMENT NO. 790

Insert at the appropriate place in the bill: "Section 328(a) of the Cranston-Gonzalez National Affordable Housing Act is amended by inserting before the period in the first sentence the following, or other individuals and entities expressly approved by HUD. This amendment shall be effective only for fiscal year 1992.".

AMENDMENT No. 791

At the appropriate place add the following new section:

SEC. . ESTABLISHMENT OF REGIONAL OFFICE.

The Administrator of the Environmental Protection Agency shall establish within the Environmental Protection Agency an eleventh region, which will be comprised solely of the State of Alaska, and a regional office located therein.

Mr. MURKOWSKI. Mr. President, I rise today to offer an amendment to the VA/HUD appropriations bill which will direct the Administrator of the EPA to create a new regional office in Alaska.

In terms of land mass, Alaska is one-fifth the size of the contiguous United States, 365 million acres, two-thirds of which the Federal Government controls. Alaska is a rural State with a population of just 500,000, connected predominantly by air transportation. Alaska produces 25 percent of the Nation's oil and substantial amounts of other natural resources. Alaska is the only State with Arctic and sub-Arctic environments. Alaska has more wetlands, more sensitive ecosystems, more need for specialized environmental management than any other State in the Union. Alaska is, and should be viewed as a distinct region of the Nation. Creation of region 11 will benefit both my State and the Nation by ensuring that the special needs of this unique land are understood and property protected.

The Environmental Protection Agency is currently making decisions vital to my State's continued well-being from the region 10 headquarters in Seattle; a city 2,500 miles away from Anchorage; a city not only far away in distance but in orientation. Region 10 solutions to the variety of environmental laws within EPA jurisdiction are designed for the Pacific Northwest and do not and cannot address the circumstances in Alaska.

DIFFERENT ENVIRONMENTAL CHALLENGES

Mr. President, let me share with my colleagues some specific instances where we need greater EPA involvement.

Alaska has over 200 million acres of national parks, forests, wildlife refuges, and wilderness. As the State continues to grow, we will need to increase our electric generating capacity or build facilities to diversify our economy. Because of the proximity of these public lands to our population centers and transportation corridors, expansion of our industrial base may present problems under the Clean Air Act even though it would not cause any significant deterioration of air quality.

Continued utilization of Alaska's mineral and oil wealth will require new and innovative methods of dealing with waste disposal and environmental mitigation. The oil industry continues to make great strides in developing techniques to produce oil in arctic conditions in an environmentally sound manner and close cooperation with the EPA will play an important role.

Over the next 3 to 4 years, 15 different hardrock mining operations will be reviewed in southeast Alaska alone. Each will require an environmental impact statement and each will be controversial. Again, high transportation costs, remote locations, unique climactic and geological considerations will all be factors.

Hazardous and solid waste disposal are becoming critical issues in Alaska. Relatively small quantities of hazardous waste have precluded building a hazardous waste facility in Alaska in the past, yet, as disposal in the lower 48 becomes more problematic, as transportation costs continue to climb and as contaminated sites in remote areas of Alaska are discovered, we will need to provide facilities in State. Should the State decide to pursue siting of a disposal site, very close cooperation with EPA will be required. Solid waste presents similar problems. Recycling measures which work in areas well connected by roads will not be practical in Alaska.

Nonpoint source pollution, total daily maximum loads, and surface water treatment are areas where EPA's assistance will also be critical. Many of the small bush villages do not have safe water or adequate sewage disposal. These communities are also small, remote and without the economic base to shoulder the high costs of typical facilities.

Alaska has 170 million acres of wetlands. Since Alaska was purchased by the United States from Russia in 1867 we have lost a half of a percent of wetlands to development. Let me say that again, Mr. President, a half of a percent in 124 years. A broad Federal no-net-loss program is ludicrous in a State like mine. What it means to us is no-net-growth. Some 45 percent of the State is classified as wetlands. We have to have EPA decision-makers in the State that understand this issue and can assist the State in getting a rational wetlands policy from the President's Domestic Policy Council.

OTHER REGIONAL OFFICES IN ALASKA

These are but a few examples of the pressing need for the EPA to have a greater presence in Alaska. And this is not without precedent. There is a standard cross-agency regional system which divides the country into 10 regions. However, few departments and agencies adhere to this system. They have divided their resources according to need. In fact, nine departments already have regional offices in Alaska; the Bureau of Indian Affairs, the Bureau of Land Management, the Fish and Wildlife Service, U.S. Geological Survey, the Mineral Management Service, the National Park Service, the Federal Aviation Administration, the Forest Service, and the Army Corps of Engineers. These agencies have already determined that the issues in Alaska require a greater presence.

REVENUE NEUTRAL

In concert with these policy reasons, I am convinced that we can create a region 11 in Alaska within existing funds. We already have two Alaska Operations offices in the State to which substantial staff and resources have been dedicated. Increases in staffing will be minimal and if we were to need additional office space, that cost would be minimal due to the abundance of low-cost building space available in Alaska. Support services like the Regional Counsel, Management and Environmental Services offices can be shared as well as some laboratory services. Offset these minimal increases with elimination of high travel costs between Seattle and Alaska and the removal of Alaska from region 10 jurisdiction and the net benefits will outweigh any costs.

CONCLUSION

Mr. President, all the quality staffing in the world cannot replace actual on-the-scene contact. We say this over and over in this Chamber: Local concerns and the subtleties of a community play a crucial role in tailoring programs that will actually work. You can't put a square peg in a round hole. And that is what is happening in Alaska. Pacific Northwest solutions for Alaska's problems are just plain ridiculous in many cases. I want EPA personnel making decisions where they live; where they're not able to retreat to headquarters 2,500 miles away. I want them to intimately understand and work day to day with the people who are impacted by their decisions.

This legislation is supported by the Alaska delegation, our Governor and has been accepted by the bill managers. My thanks to my colleagues from Maryland and Utah for their assistance.

AMENDMENT No. 792

Insert at the appropriate place the following new subsections:

SEC. . EXTENSION OF AUTHORITY.

Section 535(b) of the Housing Act of 1949 (42 U.S.C. 1490o(b)) is amended by striking "18-month period" and inserting "30-month period".

SEC. . RETROACTIVITY.

If any administrative approval of any housing subdivision is made after the expiration of the 18-month period beginning on the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989 and before the date of the enactment of this Act and otherwise is made in accordance with the provisions of section 535(b) of the Housing Act of 1949, the approval is hereby approved and shall be considered to have been lawfully made.

AMENDMENT No. 793

On page 65, line 18, before the end of the sentence insert the following new proviso: ": *Provided further*, That of the amount provided under this heading, up to $1,000,000

shall be available for the Chemical Safety and Hazard Investigation Board, as authorized by the Clean Air Act Amendments of 1990".

AMENDMENT NO. 794

(Purpose: To require financial institution regulatory authorities to make certain information available to the public in relation to the resolution of a failed depository institution by the Federal Savings and Loan Insurance Corporation involving the use of public funds)

Mr. WIRTH. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Colorado, [Mr. WIRTH] for himself, Mr. KERREY, Mr. METZENBAUM, Mr. CONRAD, Mr. WELLSTONE, Mr. ROCKEFELLER, Mr. SIMON, and Mr. BRYAN, proposes an amendment numbered 794.

Mr. WIRTH. 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 103, between lines 21 and 22, insert the following:

"(c) AVAILABILITY OF EXAMINATION REPORTS.—

"(1) PUBLIC AVAILABILITY OF INFORMATION.—

"(A) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public reports of all examinations of each insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act, resolved by the Federal Savings and Loan Insurance Corporation between January 1, 1988, and the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or of a holding company of such institution, performed during the 5-year period preceding the failure of the institution.

"(2) 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, the Federal Savings and Loan Insurance Corporation, or the Federal Deposit Insurance Corporation and any other party, where such agreement or claim relates to an institution described in paragraph (1) shall be published and made available to the public.

"(3) APPLICABILITY.—The requirements of paragraph (1) shall apply 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.".

Mr. WIRTH. Mr. President, I rise to offer a public disclosure amendment similar to the one I sought to add to the crime bill when that legislation was before the Senate. The HUD, VA, and Independent Agencies appropriations legislation includes $15 billion for the FDIC's FSLIC Resolution Fund. The FDIC will use a portion of these funds to reexamine and pay obligations incurred as a result of the so-called 1988 deals and take whatever actions permitted by the 1988 agreements to save taxpayer dollars. The FDIC has indicated that such steps will save taxpayers $2 billion over time.

These 1988 deals were negotiated by M. Danny Wall, then the Chairman of the Federal Home Loan Bank Board in the closing days of that year. The bank board was seeking to resolve thrift failures but did not have adequate funds to close the failed institutions even if that approach was the lowest cost option. Many of the agreements were negotiated hastily as the bank board and would-be purchasers of failed thrifts sought to take advantage of expiring tax credits.

The result was a number of agreements that I, and others, were critical of at the time. Time has not helped the reputation of the 1988 deals and continued study of the agreements has led to the current effort to make the best of the situation and act to reduce the eventual cost of these agreements.

The amendment I offer today will require regulators to make public the prior examination reports of the failed institutions that were sold as part of the 1988 deals. It will also prohibit the FDIC from entering into secret agreements to settle lawsuits arising from the failure of those institutions.

The amendment establishes the same disclosure requirements that I sought to establish in my amendment to the crime bill. The difference is that instead of applying it to all thrift or bank failures where tax dollars are used, the new amendment only applies to those failed institutions sold in the 1988 deals.

I continue to believe we should establish the broader disclosure requirements. However, the legislation before us today provides us with the opportunity to require disclosure for a number of institutions whose failure and resolution has drawn significant interest. I think we should at least take that step now. When an appropriate vehicle becomes available, I will seek to require broader disclosure.

This sunshine amendment will open a valuable window into thrift failure and give taxpayers access to important information about why a financial institution failed and made the use of tax dollars necessary.

The estimated cost of the S&L crisis has increased steadily in recent years, from $19 billion in August 1988 to $160 billion today. We may see it increase further before we're through. Even if the current estimates hold, we will still have to provide hundreds of billions of dollars more to pay the interest on the funds borrowed to resolve the problem. Taxpayers are being forced to provide billions of dollars to resolve the industry's problems.

Fundamentally, I believe taxpayers are entitled to know why an expenditure of this scale became necessary. But today, when taxpayer money is spent on a failed thrift or bank, the taxpayers often have no idea why the institution failed, and have no means to obtain that information.

It is important to note that the requirements of the amendment only apply to institutions that have cost taxpayer funds.

Settlements of lawsuits filed by the Government against individuals and businesses involved in an institution's failure and the examination reports of banks and thrifts can provide valuable insight into why an institution failed and why tax dollars were needed to cover the institution's losses.

Unfortunately, under current law, this important information is not available to the public. The amendment would correct that and shed some light on how the S&L crisis developed in the case of these particular institutions.

Disclosure is more than just an obligation to the taxpayer, it offers important benefits as well. Public disclosure can act as a forceful deterrent. Both bankers and regulators should know that the public will examine their actions when banks fail and hold them accountable.

Disclosure will not only promote more thorough bank examinations, but also fairer examinations. Some bankers have complained that examiners act arbitrarily. If disclosure is required, any arbitrary acts by the examiners will also come to light.

I would not be surprised if the banking regulators oppose this proposal. Some examination reports will, in retrospect, look bad after an institution has failed. I am sure there may be reports that regulators hope will never see the light of day. Other reports, no doubt, will show examiner warnings that should have been heeded.

Lax supervision did play a role in the S&L crisis—the combination of deregulation of thrift activities and relaxed supervision of thrifts was perhaps the greatest mistake of the 1980's. But the blame for that should not lie exclusively with the regulators. They were overworked at the time and requests for additional staff were ignored by an administration that felt a deregulated industry did not need supervision, acting as if there were no such thing as federal deposit insurance.

Some banking regulators have opposed similar disclosure efforts in the past, arguing that disclosure will lead to bank runs. For example, regulators opposed the change in FIRREA that required the bank regulators to publish their final orders on enforcement actions. They said there would be bank runs; they said the sky would fall in. It did not. And regulators opposed the change in the Crime Control Act of 1990 that required the bank regulators to publish all of their enforcement orders and agreements. They said there would be bank runs; they said the sky would fall in. It did not. In the case of these institutions that have already failed,

the possibility of bank runs is not a concern.

Other administration officials have understood the importance of the sunshine of public disclosure in regulation of the financial industry. For example, Securities and Exchange Commission Chairman Richard Breeden, the White House's point man on the S&L cleanup when President Bush first took office has said:

I would hope we would learn from the disastrous experience of the thrift crisis as we move forward in developing both accounting and disclosure standards. * * * I think public disclosure is the greatest disinfectant, one of the greatest disinfectants ever invented.

Mr. Marshall Breger, the Chairman of the Administrative Conference of the United States, an independent agency that develops recommendations to improve the administration of Federal programs, including regulatory efforts has said:

The traditional approach to the oversight of financial institutions—namely heavy reliance on informal or "quiet" procedures to achieve legislative and regulatory policy goals—was satisfactory because the workload was under control and there was no apparent systemic problems that needed to be solved. But when significant failures erupt among regulated entities, and the day-to-day workings of the Federal agencies become front page news, traditional informal, nonadversarial, back-room approaches are no longer sufficient. Enhanced decisional regularity, procedural openness, and greater public accountability are now demanded. * * * I think sunlight, to quote Justice Brandeis, is indeed the best disinfectant.

I think Mr. Breeden, Mr. Breger, and Justice Brandeis are right. Sunlight is the best disinfectant. Sunlight offers a check against dangerous practices. If people want to keep their business practices private—there is an easy way to do it. Run a safe and sound institution. That's what we all want to see.

Perhaps a little more sunshine in the early 1980's might have helped avert some of the S&L failures that were resolved in December 1988.

We should remember that S&L's and banks are not typical private businesses. They receive significant benefits from taxpayer support and guarantees. Deposit insurance and access to credit through Federal institutions such as the Federal Reserve and Federal Home Loan Banks are examples of the special support we give depository institutions. With this kind of government backing, thrift and bank problems are a legitimate public concern.

When the insurance funds are healthy, losses are covered by private funds—the insurance premiums paid by banks and thrifts—and a degree of privacy is appropriate. But when the so-called safety net breaks down and tax dollars are tapped as they were in the 1988 deals, we are in a different situation. Taxpayers have a right to know.

The public will benefit from public disclosure of both examination reports and settlements of lawsuits the Government files against individuals involved with these failed financial institutions. Public disclosure does not mean the FDIC and RTC should not pursue settlements of lawsuits, however.

FDIC and RTC lawsuits will offer an important window into the actions of management, directors, legal representatives, and auditors and how they contributed to a bank or thrift failure. Even a public settlement partially closes that window as witnesses do not testify and documents are not filed as evidence as they would if the suit went to trial. But regulators should be able to settle these lawsuits to avoid costly and time-consuming litigation that often has an uncertain outcome and free up FDIC or RTC resources to pursue other cases.

Settlements can be in the best interests of taxpayers. And partially closing the window is the price we pay for pursuing settlements. But we should not bring the shades down completely. That is why I think settlements should be available to the public. The public has a right to know about settlements if they are footing the bill for a bailout.

As long as settlements can be kept secret, public suspicion is inevitable. The public does not have a high degree of confidence in our banking regulators right now and are unlikely to trust secret settlements that offer the appearance of backroom deals. I believe taxpayers have a right to know about these settlements.

Again, I think all the reasons I have discussed for supporting disclosure for institutions involved in the 1988 deals apply to all financial institutions failures where tax dollars are used. But this amendment is just a step toward that goal. I encourage my colleagues to join me in this effort.

Mr. President, the offering of this amendment comes as no surprise to any of my colleagues. I and its cosponsors, Senator KERREY, Senator METZENBAUM, Senator CONRAD, Senator WELLSTONE, Senator ROCKEFELLER, Senator SIMON, and I am sure before we are done, many others, believe that the S&L's that have failed and been bailed out by the taxpayer, that those records should be public information.

I had attempted to offer this amendment to the crime bill, believing that there has been not only a great deal of shady activities, but clearly some high-powered white-collar crime in this whole area. Through various parliamentary situations, I was precluded from offering the whole amendment.

I noted in the legislation, the HUD and independent agencies appropriations bill, whose distinguished chairman, Senator MIKULSKI, has done such a good job on this bill, I noted in that legislation, Mr. President, that there is some $15 billion to resolve the S&L deals that were made prior to the passage of the FIRREA or the S&L legislation in early 1989.

In shorthand, Mr. President, there is $15 billion in this legislation for the so-called 1988 deals. These were the deals that were made at the close of the last administration. These were the deals that were made at a time when the administration had not asked for money here, and was setting up a number of what many believe were sweetheart deals in which agreements were made by the Federal Government with various purchasers to buy these bankrupt S&L's.

We are, in this bill, spending $15 billion—$15 billion, Mr. President—to do this.

Last year, on these deals, we spent $22 billion. The total estimated for the 1988 deals is currently estimated at $57 billion; $57 billion of taxpayers' money going for the 1987–88 deals only.

Yet you, Mr. President, or I or our staffs or the general public or newspapers in the country or aggrieved taxpayers cannot find out what happened and what they are getting for $57 billion. You cannot find out. The public cannot find out. You cannot offer a freedom of information request and get this information. A local newspaper, whether it is South Rocky Savings & Loan in Colorado, or East Orange Savings & Loan in California, or South Prairie Savings & Loan in south Texas, wherever it may be, a newspaper cannot go in and find out what happened in their local S&L. Who cut what deal with whom? Who borrowed from whom? Who borrowed? Under what conditions? With what collateral? Nobody knows because these are all documents that are not made available to the public, even if the public files a freedom of information request.

This is a very narrow amendment. This only goes to $57 billion worth of deals. I hope this amendment will be agreed to and I hope, also, we will have the good judgment to offer a similar amendment at a later date for the other $160 billion. The American taxpayer is out, now, well over $200 billion. In 1988, the administration told us this would cost a modest $19 billion. Mr. Gould came in and testified in front of the Banking Committee and said $19 billion was adequate to do the task. That was in late summer or early fall, 1988.

In 1989, the administration came back and told us that $19 billion was not adequate. The price went up in 1989 to $40 billion with an additional $10 billion cushion.

In 1990 that $50 billion was not adequate, and the price in 1990 went up to $107 billion for the RTC. And last week, 2 weeks ago, Mr. Seidman was in telling us this was going to be at least $160 billion.

We are not talking here about the $160 billion. That comes later. That caused a lot of problems. We will bring

that up on the banking bill or whatever vehicle later. We are talking here about $57 billion for the 1988 deals. We are talking here specifically about the $15 billion in this particular piece of legislation. In the bill in front of us is $15 billion.

Some would say this is not germane to this legislation. Clearly this amendment is. The FDIC will be using a portion of these funds to reexamine and pay obligations incurred as a result of the so-called 1988 deals and take whatever action is permitted by the 1988 agreements to save taxpayer dollars. The FDIC has indicated that such steps can potentially save taxpayers $2 billion over some time. This is an absolutely germane amendment.

What would it do? What might we find out on these deals that were made, the 1988 deals, if we make the information available to the public? We might find out, for example, if any of these loans were issued in violation of any law or regulation. Were loans made over the one-borrower limit? There are limits set in the regulation as to how much an institution can loan to a single borrower. Were those regulations followed? Or was there some kind of a sweetheart deal between that S&L and one customer or one group of customers that violated that limit?

Were appraisals done? When the loans were made, and there were lots of loans made out there on pieces of dirt which in turn had been turned over and turned over and turned over, were appraisals made? Did these S&L's make appraisals when they made the loan? Who did the appraisal? How thorough were those appraisals? Without this amendment, Mr. President, you will not know, I will not know, nobody will know because we cannot find out. This information has to be made public.

What did the regulators know in the process? Did the regulators have a pattern of looking very carefully at this institution or not? How did the regulators behave? It may well be this amendment makes a number of regulators uncomfortable because we saw, we all know, an absolutely delinquency at the FSLIC between the time the so-called Garn-St Germain Act was passed in 1982 and the S&L's were deregulated. We deregulated the S&L's, allowed them to do all kinds of things, but the administration dramatically cut the regulation. What did those regulators who remained know? What did they watch during this process leading up to the 1988 deals?

Did they see what had happened and not act? Did they report to some of their superiors and maybe somebody put the lid on it at a superior level and did not let the information out? Were they quashed? Were they trying to do their job but were not allowed to do so? We are going to find out as well, Mr. President.

Who made the bad loans? Who was responsible for doing it? Was there one officer involved? What were his relationship to other people? We can find that out. And why were these loans bad? What happened to those loans? Were they made on commercial real estate? Is there a pattern of commercial real estate loans and that is what caused the problem? Or maybe there was a pattern in these loans of putting a great deal of money into leveraged buyouts. And what was the relationship of the lending institution and the institution with the leveraged buyout? We can find that out.

Or, was there a pattern of particular concentration in high-yield bonds? Was there a relationship between those high-yield bonds and the institution and the one to whom they were making loans? We do not know that information now, Mr. President, but this gives us the opportunity to look for it.

Who got the loans? Were there officers of the S&L who got the loans? Were there board members of the S&L who got the loans? Were there some kind of tie-ins between two or three or four institutions and the failed S&L's who got the loans? We cannot find out that information now. We do not know who got these loans. Yet the taxpayers are being asked to spend billions of dollars to bail out loans, but we do not know who got them, we do not know who made the loans, we do not know what the collateral was.

What was the status of these institutions at the time the loans were made? Were they safe and sound at the time the loans were made? Were they insolvent and the lending officers knew the S&L was insolvent, could not make these loans and, in fact, if the loan went bad, the taxpayers were going to have to come in because the deposits were insured? Did that happen? At what point did the S&L know that that S&L was insolvent? And when, behind that, did the regulators know?

Again, Mr. President, we cannot find out any of that information now. We do not have a pattern of what happened when, in any of these failed institutions, because this information is not public.

Granted, I will say again, this may embarrass some individuals. It may embarrass some of the people who were officers of the S&L, but they assumed that responsibility. It may embarrass people who are board members of S&L's, but they have that responsibility. It may embarrass individuals who were regulators and who had the responsibility for doing this and they may be embarrassed. It may be that they were overwhelmed, the S&L business having gone up dramatically following 1982 while the number of regulators and resources devoted to following up the S&L's declined very dramatically after 1982.

So we have this wedge in there and the regulators clearly were overworked. In that process were they harassed? In that process did they ask for help and did not get it? In that process were some of their memos to superiors quashed for political reasons? Quashed for other kinds of reasons? We cannot find that information out now, Mr. President, but after this amendment becomes law—which I hope it will—we can find out that information.

What will happen with that information? I do not know, Mr. President. But I certainly do know that what Justice Brandeis said about sunshine being the best antiseptic applies better to this than anything else that I can imagine. We do not have the resources in the Senate. The Senate Banking Committee has a very small staff. We do not have the resources and should not be siccing the General Accounting Office on all of these failed S&L's. We do not have all the resources to find out what happened in all these things. But I will bet if this information is public, since there are citizens who are very angry about the fact that they are paying, each household in this country, thousands of dollars for bailing this out, they are going to band together and say, "what happened?"

I will bet anything there are newspapers in these communities who are going to go after the institution there and check the history of that institution and find out what happened. There are a lot of enterprising reporters reaching into these institutions and saying what happened and why? Why were these deals made? But they cannot get that information now. They cannot get the information because it is not public. You cannot offer a freedom of information request—you cannot do it. If this amendment is adopted, then we will be able to do so.

It seems to me that a basic fact of a democracy is that when public money is expended, the public ought to know where that money is going. The only places where I can think that should not be the case is, one, in classified Defense Department programs. We deal with that issue very carefully by having a different way of dealing with that and everybody knows there are classified Defense Department programs and everybody knows there are classified Intelligence Committee programs. All the intelligence gathering techniques and so forth—there are classified programs there.

There is a very good reason for not having that information of the expenditure of taxpayer money made available publicly. We have a check on that. The Armed Services Committee watches carefully what happens to that classified information. The Pentagon is not allowed to shovel everything into the classified account so that they are not held accountable. The Pentagon, for the most part, is accountable and have

to explain to the public how they spend their money. It is the same thing with the CIA. We have an Intelligence Committee that oversees the CIA, rides herd on it. We are hearing debates about that right now. There is an accounting there even for the programs that are classified.

There is no accountability of $57 billion of taxpayer money. We cannot find out. The only way now that we can find out is to go through the cumbersome process of taking an already beleaguered General Accounting Office and giving them a particular charter to go after something. The taxpayers do not know. The public does not know. Yet, we have $57 billion of black hole money that has been spent, and we do not know where it has gone and why.

This $57 billion is just the tip of the iceberg. It is small compared to the next piece which is $160 billion.

It would seem to me, Mr. President, that this is exactly the kind of amendment which we ought to be adopting.

It seems to me that this kind of disclosure not only will promote more thorough bank examinations as well, but also a fairer examination. Again, we know that this is an important public set of issues, but it also serves the purpose, Mr. President, of helping to make the regulators more accountable. They are going to know in the future that this kind of thing, if there is a failed S&L, failed institution of this kind, they will know in the future that these examination reports are going to be made public and, therefore, they are going to do a better job.

As I said before, I am sure that some of these bank regulators are going to be extremely uncomfortable with this, but I think, Mr. President, that this is precisely what we ought to do.

There has been, as well, a major concern among current members of the administration to make sure that we have a number of these out in the open. The importance of the sunshine has been reflected by many members of the current administration. For example, the Chairman of the Securities and Exchange Commission, Richard Breeden, the White House's point man on the S&L cleanup, did a very able job of assembling FIRREA very rapidly and crashing into that program in 1989.

I have great admiration of Mr. Breeden. When Bush first took office, Breeden said:

> I would hope we would learn from the disastrous experience of the thrift crisis as we move forward in developing both accounting and disclosure standards * * *. I think public disclosure is the greatest disinfectant, one of the greatest disinfectants ever invented.

Mr. Marshall Breger, Chairman of the Administrative Conference of the United States, an independent agency that develops recommendations to improve administration of Federal programs, including regulatory efforts has stated:

> The traditional approach to the oversight of financial institutions—namely heavy reliance on informal or "quiet" procedures to achieve legislative and regulatory policy goals—was satisfactory because the workload was under control and there was no apparent systemic problems that needed to be solved. But when significant failures erupt among regulated entities, and the day-to-day workings of the federal agencies become front page news, traditional informal, nonadversarial, back-room approaches are no longer sufficient. Enhanced decisional regularity, procedural openness, and greater public accountability are now demanded. * * * I think sunlight, to quote Justice Brandeis, is indeed the best disinfectant.

There can be no more eloquent statement.

We should also remember, Mr. President, that S&L's and banks are not private businesses. They receive significant benefits from taxpayer support and guarantees. Deposit insurance and access to credit through Federal institutions such as the Federal Reserve and the Federal home loan banks are examples of the special support we give depository institutions. With this kind of Government backing, thrift and bank problems are a legitimate public concern.

When the insurance funds are healthy—the S&L fund, the bank insurance fund—losses are covered by private funds. Insurance premiums are paid by banks and thrifts and a degree of privacy is appropriate. But when the so-called safety net breaks down and tax dollars are tapped, as they were in these 1988 deals, we are in a different situation and taxpayers have a right to know.

The public will benefit from public disclosure of both examination reports and settlements of lawsuits the Government files against individuals.

Let me also note, Mr. President, what the difference is between what happens under this amendment and what happens in a normal bankruptcy. If a small business in the United States goes bankrupt, that failed institution goes in to the bankruptcy judge and says to the bankruptcy judge, here are my assets, here are my liabilities and the judge decides who gets paid. The judge goes through all of this information. In a bankruptcy on the private sector, there is a vast amount of information laid out.

But we are not even laying out that much information for the S&L's. All we are requiring is that these reports on what happened in those institutions, when and where, be laid out. We are not making available the records on who was a depositor in an institution, who put their savings in there. We are not dunning any institutions that are healthy. This has to do only with those failed institutions that are bailed out with taxpayer money. This is a much narrower requirement, Mr. President, than even is laid out for a bankruptcy.

So why shoud the taxpayers' money not be even approaching the significance of the bankruptcy for private transactions? These are public transactions, Mr. President, and they absolutely need to be made available publicly.

These settlements can be and should be in the best interest of taxpayers. That is what they are supposed to be all about, and partially closing the window is the price that we pay for pursuing settlements. But we should not bring the shades down completely. We should have these settlements made available.

I think they should be made available to the public. I think it is absolutely time we do that, Mr. President. That is what this amendment is intended to do. It is not punitive for healthy institutions, it does not reach beyond the 1988 deals. It just says that the taxpayer ought to know where that $57 billion goes.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

AMENDMENT NO. 795 TO AMENDMENT NO. 794

(Purpose: To require financial institution regulatory authorities to make certain information available to the public in relation to the resolution of a failed depository institution involving the use of public funds)

Mr. KERREY. 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 Nebraska [Mr. KERREY] proposes an amendment numbered 795 to amendment No. 794.

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

The PRESIDING OFFICER. Without objection.

The amendment is as follows:

> Beginning with page 1, line 5, strike through the end of the amendment and insert the following:
>
> (A) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public reports of all examinations of each insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act, resolved by the Federal Savings and Loan Insurance Corporation between January 1, 1988, and the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or of a holding company of such institution, performed during the 5-year period preceding the failure of the institution.
>
> (2) 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, the Federal Savings and Loan Insurance Corporation, or the Federal Deposit Insurance Corporation and any other party, where such agreement or claim relates to an institution described in paragraph (1) shall be published and made available to the public.
>
> (3) APPLICABILITY.—The requirements of paragraph (1) shall apply to any insured de-

pository institution that has had its assets or liabilities, or any part thereof, transferred to the FSLIC Resolution Fund or the Resolution Trust Corporation.

(d) PUBLIC DISCLOSURE CONCERNING CERTAIN FSLIC TRANSACTIONS.—The Board of Directors of the Resolution Trust Corporation shall make available to the public not later than October 1, 1991, the draft version of a report prepared for the Oversight Board of the Resolution Trust Corporation and the Congress in accordance with section 21A(b)(11)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(11)(B)) that identifies by name all bidders and their employers, as well as all Federal employees and officials, involved in the Federal Savings and Loan Insurance Corporation's Southwest Plan transactions and Oklahoma Plan transactions.

Mr. KERREY. Mr. President, this amendment to the amendment offered by the distinguished Senator from Colorado is a bit narrower than the general requirement of release of information. This deals with a report that was done for the Congress and for the Resolution Trust Corporation's oversight board as a consequence of a very specific mandate in section 501(b) of the FIRREA legislation. That was a requirement for the RTC to report to the RTC oversight board and to Congress regarding all insolvent institution cases resolved by FSLIC between January 1, 1988, and August 9, 1989.

Mr. President, there were two volumes of this report which covered the Southwest plan and the Oklahoma plan transactions. These reports were prepared by Steptoe & Johnson, a law firm in the Washington, DC, area.

The amendment that I am offering comes as a consequence of some difficultly on the part of the RTC in deciding whether or not to release the complete version of this report. The problem arises because they are concerned, in the first instance, about germaneness of some of the information in the full report and then, second, Mr. President, the RTC board becomes concerned about the possibility of lawsuits that might be filed either against people who work for the RTC or perhaps even against individuals who work for Steptoe & Johnson. So there are some legitimate concerns, I believe, about the full release of that information.

Nonetheless, Mr. President, I have examined the report, and I simply find nothing in there that I would want to withhold from the public.

All of us have that opportunity to present to the public every piece of information that the public asks us. We are very familiar with full disclosure. We are familiar with the advantages of full disclosure, and we are familiar with the burdens of full disclosure.

In this particular case, Mr. President, what we are talking about is a transaction that occurred over a specific period of time from January 1, 1988, until August 9, 1989, when FIRREA was enacted. Over that period of time, some employees of State government negotiated on behalf of the taxpayers agreements that obligated the taxpayers, as we are today considering 15 billion dollars worth of appropriations of taxpayer money directly as a consequence of the transactions that were negotiated in 1988 and 1989.

Mr. President, I believe that unless there is an overwhelming, compelling reason to withhold information about those transactions, that information should be released. It is difficult for Members of Congress to do that kind of analysis and reach a conclusion as to whether or not the information should be released.

I would side with the remarks of the distinguished Senator from Colorado that unless there is national security issue at stake, unless we see the kind of detailed transactions, personal tranactions, that could somehow compromise an individual that did not expect that information to be released when they were negotiating with the Government, all those sorts of things could possibly cause us to conclude that at the time information should be withheld.

But, Mr. President, I call to the attention of my colleagues that we are not talking about, in my judgment at least, that kind of information. These are the reports that have been released to the public. A member of the press goes to the Resolution Trust Corporation and asks to see the evaluation that was done of those deals—and by the way, the report overall concluded that there were unfair procedures in the sales, which is one of the reasons that the press would like to get access, the public would like to get access to the full reports themselves that, indeed, Steptoe & Johnson indicated there were unfair procedures in those sales.

Mr. President, the full report does contain some personal information. The report is somewhat larger. The full report does contain information about some individuals who bid, and some individuals who approached the Government, but that is precisely the analysis that was done by Steptoe & Johnson, trying to determine whether or not there was unfair advantage given to some individuals.

So, Mr. President, I think it is legitimate for us to be supplied with the record and analyze and reach a conclusion whether or not it should be released. It seems to me it is a legitimate request on behalf of the people that the public have an opportunity to examine that final report itself.

There is a further reason I urge upon my colleagues to consider this particular amendment. That is, indeed, it is difficult for the RTC Board that in response to my questioning has said on repeated occasions they would consider releasing it—they have now scheduled a meeting for July 31 on which they are going to take this matter up—it is difficult for a Board like this to make a decision. It is difficult for this particular Board, which, Mr. President, I point out to my colleagues is also the Board of Directors for the FDIC. The RTC and the FDIC have one Board. That Board must make a decision now about whether or not to release the information. It is difficult.

I believe it is legitimate for us to provide some basis for that Board to make this decision, for us, based upon our understanding of full disclosure and the need for full disclosure, to support this particular Board when it makes a decision, so they have some comfort that we are backing that decision with our own best judgment.

Further, Mr. President, I say again to my colleagues who have examined this dual Board structure, the RTC Board must wonder whether or not their decision could in fact be overruled by the RTC Oversight Board itself. The RTC Oversight Board may say we have no intent of overruling your decision, but on previous occasions they have overruled and taken different action.

So I urge my colleagues to consider favorably this amendment. It is consistent with the kind of disclosures that not only we make throughout our service but the kind of disclosure I think all of us have grown accustomed to throughout Government.

Mr. WIRTH. Will the Senator yield?

Mr. KERREY. I will be glad to yield to the Senator from Colorado.

Mr. WIRTH. I commend the Senator from Nebraska for this amendment. I think it is helpful. The amendment simply goes to make public the Steptoe & Johnston analysis of how the 1988 deals were made and how much they are going to cost us. I think it is exactly the right thing to do. I thank the Senator for yielding and for his good work.

Mr. KERREY. Mr. President, it sometimes falls to us to try to remember what we were previously very concerned about; that during the debate about FIRREA legislation there was a great deal of concern about the 1988 transactions, and in some cases unfounded accusations made about the nature of these transactions. What occurred was the Congress, I think quite correctly, said that there was a requirement for an investigation to occur, an independent analysis of what occurred in those transactions. Indeed, in withholding the information as we all know, Mr. President, it creates an impression of conflict that may not be there. It creates a suspicion that perhaps something occurred that, indeed, did not happen.

One of the things that I believe is happening in America is that all the appropriations of the Resolution Trust Corporation are being called into doubt as a consequence of a deterioration of trust, in many cases not as a result of individual performance or individual intent but merely as a result of the

public not getting all the information it deserves.

At the risk of being redundant on this particular issue, the oversight board only has four public meetings a year in which the public has a right to come and make their case and hear what decisions are being made, to listen to the logic of the decisions, and to have the opportunity to hold the public board accountable for the decisions and the basis for those decisions.

Mr. President, this is an amendment that I think is consistent with every standard of disclosure that we have as Members of Congress, and those of us who have had experience in the executive branch can testify as well it is a standard to which we have to hold in the executive branch as well.

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

The PRESIDING OFFICER. Is there a sufficient second?

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. There is not a sufficient second.

Mr. WIRTH. Mr. President, I believe there is a sufficient second.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. GARN. Mr. President, I suggest to my colleagues that they do not need to worry about a sufficient second at this time. After we have discussed this for a few hours or a few days, I am sure they will be able to get their sufficient second.

I feel very badly that we even have to discuss this subject on this particular bill. We have a good, well-balanced bill that deals with appropriations for a lot of fine agencies. I do not know how the Chair would rule. I never have known. But it clearly would be a technicality if this was considered germane. It is clearly legislation on an appropriations bill.

I do not know whether I will test that or not. I will decide sometime later. That is not nearly as important as what bad public policy this is.

I should probably be more moderate in my statements, but I will not. I sat here and thought about it. I thought that I would, but as a matter of fact this Senator is a little bit tired, more than a little bit tired, of this issue being politicized.

This Senator, after stuggling through this issue for many, many years, thinks it is far too important to play Republicans and Democrats with it or try to embarrass someone. There is plenty of blame to go around for probably the worst financial catastrophe this country has even been involved in. It will get bigger before it gets better. That should be obvious to everyone.

I have told the administration many times, whatever you think your estimates should be, double it, because even though you are doing the best estimates you can at this time, you know you are going to be wrong. You cannot predict the real estate economy, you could not predict the recession, you cannot predict the war, so just double it each time, and maybe you will be closer. That is all a matter of public record as well.

Over and over again, I have tried to be very realistic about this subject. Last fall, I got so upset with the RTC that I told them to do something even if it is wrong. Just do something because with all of the delay 2 years have passed since FIRREA. They have not done their job well enough. There is no doubt about that, no doubt whatsoever. Anybody can clearly see that.

Why do we not all recognize that and try to work together on some means because there is partisan politics that go on on both sides. Let us not kid anybody about that. But this Senator is sick and tired of it. Frankly, that is one of the reasons that I am not running for reelection. The major reason or overwhelming reason is I want to spend more time with my wife and children. It is a personal decision. I do not like to stay away from my family until 11, 12 playing games night after night for 18 years.

So I am leaving. But there is another reason. This body becomes more and more politicized every year I am here. I understand partisan politics. I am a Republican. There are a lot of issues that deserve to have partisan differences of opinion. But there are some that should have none. There are some issues we should just forget where in the heck we came from and what our political language is, and decide this country has one hell of a problem—and let us work together to try to do something about it.

We have one side that tries to minimize it, and the other side that tries to blame; and, boy, we have a wonderful dead horse here—the 1988 deals. Over and over and over again, year after year, the 1988 deals reminds me of a Republican and 50 years later we still blame Herbert Hoover. The Democrats have finally quit running against Herbert, or whatever his name is, Hoover. They finally quit that one.

I guess now we are going to play the 1988 deals and hopefully someday we will find that George Bush and Ronald Reagan did it all by themselves. Well, that is fine I guess. My party probably would be doing the same thing if it was a Democratic administration that had been around.

I understand the game. I understand it fully. But it does not make it right. It does not make it right that in some issues that are as important as this issue—and the incredible cost to the taxpayers—that we cannot forget the games, the politics, and sit down together, and say, what is the best public policy? That does not mean this Senator knows exactly what the best public policy is. But, collectively in this body, there certainly ought to be enough intelligence if we sat down together as Members of the U.S. Senate and said, collectively, what is the best public policy?

We are going to have another couple of amendments on the 1988 deals today from Senator METZENBAUM that I will accept after being modified. We will add more language every year. We will study them to death. Hopefully, on some people's part, we will find something terribly wrong. I do not know.

If I wanted to play the game, I guess, I should start off with amendments to investigate the Congress. I will guarantee you the record is very, very clear. The 1988 deals never would have been necessary, however good or bad or indifferent they are. Whether they are special deals or not, whether there is fraud, I do not know.

But I do know that if Congress had provided the money for FSLIC, if they had recapitalized FSLIC, the 1988 deals would not have been necessary—simply would not have been necessary. You would have had the money to go in and say, hey buddy, you are brain dead, you are out of existence. You could have done it, and done it a lot sooner back in 1985, or in 1986. The Senate at least behaved responsibly in the fall of 1986. The Senate passed a $15 billion FSLIC recap. The House of Representatives did not. Not only did the House of Representatives not recapitalize FSLIC in 1986, but they let the emergency provisions of Garn-St Germain expire. As long as I have mentioned Garn-St Germain, I am sorry.

The Senator from Colorado has left because this Senator is a little bit tired of the linkage between Garn-St Germain and deregulation and the problem. I will try for the 10,000th time to make a few points.

Garn-St Germain is still the law of the land, not primarily a deregulation bill. It was a regulatory bill and the first two titles were regulations—such things as allow troubled institutions to be merged across State lines so that you could find merger partners, rather than running down the FSLIC fund. The emergency provisions expired on September 30, 1986, and so after failing to get the $15 billion FSLIC recap—again totally paid for by the U.S. Savings and Loan League and their members, not a dime of taxpayers' money involved—they not only would not pass that, but they did not pass the extension of the emergency provisions of Garn-St Germain.

So we left the session in October 1986 not only not giving new power, new authority, and money for FSLIC to close down these brain-dead institutions, but we took away the existing emergency power. I would also add as to deregulations part in the failure of these institutions that over the last 10 years 74 percent of the entire dollar volume losses in this entire crisis occurred in State-chartered institutions.

I could drag out the testimony that if Garn-St Germain had applied to State-chartered institutions, not just Federal, there would not have been a S&L crisis.

One example. One of the big problems in this whole deal was direct investments where an institution did not have to make loans. They could make investments on their own behalf—ridiculous concept. Garn-St Germain continued the existing law of allowing 23 percent in direct investment, directed to Federal Home Loan Board, however, not to expand that definition.

So it actually tightened down on direct investments in the 3-percent basket but the Texas Legislature allowed 40 percent in direct investments and the craziness of the California legislature allowed 100 percent in direct investments. A State-chartered S&L in California did not even have to make loans.

So let us talk about facts here. Deregulation was a major cause of the problem. Seventy-four percent of those dollar volume losses occurred in State-chartered institutions and the vast majority of those losses occurred in Texas and California. Maybe we ought to investigate the Texas and the California legislatures but not the Federal legislation and not the Senate which did try very hard to recapitalize it.

So maybe I ought to start offering amendments every time we are going to investigate the 1988 deals. Maybe I ought to try to get into forbearance in the House of Representatives. Maybe I ought to talk about the role of some of the leadership in the House of Representatives that said it was a $5 billion problem.

We talk about estimates on this problem, and who was underestimating? The House of Representatives, not in an opinion, not in an estimate, but by the passage of a bill in 1987 said it was a $5 billion problem. That is all they had to pass to solve the problem. $5 billion will not even take care of the interest. But that is what the House of Representatives said.

If we are going to try to play games and politics and assess blame, then maybe this Senator every time an amendment comes up on the 1988 deals, will start offering one to have an investigation of the House of Representatives.

What are we going to find out? We are not going to find any dishonesty or any fraud over there but we will find out there was a heck of a lot of influence from the U.S. Savings and Loan League and the S&L's who wanted a Federal bailout, who wanted the taxpayers to bail them out.

I spoke to a group of them once in Phoenix when I was pushing my $15 billion FSLIC recap. One of them stood up and said, but you do not understand. We think this is the taxpayers' problem. We do not want to pay for our own problems.

I said, well, you probably will never invite me back again, but that is immaterial because if taxpayers of this country should not have to bail out waste, fraud, abuse, and stupidity, that is your problem.

I passed a $15 billion FSLIC recap in this body and again if anybody wants to forget the opinions, forget JAKE GARN's opinion, forget anybody else's opinion, just go back and read the CONGRESSIONAL RECORD.

If one just reads the hearing records in the House Banking Committee and the Senate Banking Committee, any fair-minded person has to come to the conclusion that the S&L crisis never would have occurred if Congress had done its job, if they had given the Federal Home Loan Bank Board the money and the authority to move in and close these institutions down. That was not done.

My purpose is not to stand here and defend the 1988 deals, because I do not know enough detail about each one to make that decision. I have no objection to going back and it being investigated. Over and over again, I have stood here and agreed to language that does that. With Senator METZENBAUM, we have gone through this several times. And the public has a right to know what happened in those and where their money is going.

That is not in dispute among the Senators here on the floor today. It is, how many times do we do it and in what ways do we do it, and simply to recognize the reality of the situation. Not once have I ever stood on this floor and ever attacked what went on in 1986 in the committee, or back in 1984 or 1985 about the House and the forbearance and their willingness to do it. Only in response to the other side. I have not and I will not initiate it, because I think it is immaterial at this point. It does not make any difference.

The point is, what do we do from now on? What should we have been doing?

I do not think RTC has done their job very well. Two years have passed, and they have not moved rapidly enough. Yet, many of the things we do hamper their activities. So we deserve some blame as well.

Let me get to what we are talking about in the Wirth amendment. Again, I do not have any problem with the intent of what Senator WIRTH is trying to accomplish. He is a distinguished member of the Senate Banking Committee and a very capable one. I value his membership on that committee. What are we trying to accomplish here? We are trying to find out what happened, and I have no problem with that.

I do not know how many studies we have to have to do that. But my problem here is not even with these reports being made public in some instances. My problem is: Do we cause more problems than we solve? Do we create problems with regulators that accomplish the exact opposite of the intent that the Senator from Colorado wants to accomplish? And do we embarrass or involve a lot of people?

We have heard a lot of talk lately about "right to privacy under the Constitution." I am not an attorney, but we talk a lot about right of privacy. This Senator has a hard time understanding the abortion debate, but that is a privacy issue. But honest people can disagree on that. We are going to hear a lot about privacy in the Supreme Court deliberations over and over again. But it seems to me that those people who are so concerned about privacy of the individual would not be for an amendment that is going to involve a lot of innocent people.

I have no problem with a board of directors, and I have no problem with the owners. That is not my problem. But this amendment goes further than that, where we are going to get involved with names of borrowers, and amounts. We are talking about customers of the bank.

I do not know—if I make deposits in banks or have loans as an individual, or anybody else in this country as a citizen—that it is anybody's business what I as an individual do. If I put my money in or make a loan on the bank, that is going to appear in the newspaper someday for everybody to see.

I think it is very clear that this amendment does endanger the privacy rights of the customers of these institutions.

I think we also ought to recognize, once again, what this bailout is involved in. Not one stockholder, not one officer, ever got any money out of this. That is not the intent. The intent is depositors.

We made a commitment, after the Great Depression, that depositors would be protected, and we put the full faith and credit of the U.S. Government behind that, so we would not have another catastrophe. So we have always been concerned about depositors, particularly the smaller depositors, with their life savings in our institutions—as we should be.

So every dime of this bailout that we hear about every day, as large as it is becoming, people at least ought to recognize that it is keeping the commitment of the Government of the United States to depositors, not stockholders, presidents, boards of directors, or anybody else. In most cases, they deserve exactly what they are getting, and maybe more in some cases.

I have tried hard, along with my staff, to make this point and to work out an amendment that we could agree on so that we were not exposing innocent customers of these banks. Again, names of borrowers and amounts; names of large depositors and amounts, unsubstantiated statements attributed—this is what are contained, to be

clear, in examination reports that are made public in their entirety—to employees and/or management that would intimidate future free communication with open banks; information on security and safety systems and control that would continue to apply in the assuming bank; information affecting civil and criminal legal actions that would give unfair advantages to another party; salary and benefit information on employees.

What are we after here? Are we delving into the privacy of these people? I think it goes far beyond what is necessary to achieve the purposes which my colleague from Colorado would like to.

I have letters that at this time I will not go into, but I will quote from Chairman Seidman of the Federal Deposit Insurance Corporation, a letter dated July 10:

Regardless of whether the amendment applies to open or closed institutions, we have serious concerns about the effect of the amendment. To understand the impact of the Wirth amendment disclosure requirements, it is necessary to understand the nature of the contents of the reports of examination. Bank examination reports contain detailed descriptions of all criticized loans and other personal financial information about the bank's customers.

Information that has been provided by confidential sources about the bank, its management, and customers, is in the report. The examination reports also contain very sensitive financial information about the bank in its operations which, if publicly disclosed and thereby available to competitors, could place the insured institution at a substantial competitive disadvantage. Finally, the efficacy of the examination process is dependent upon the cooperation and willingness of an institution's management to provide highly sensitive information that otherwise would be difficult, or even impossible, for the examiners to obtain, and of which they might be completely unaware.

Mr. Seidman came on board after much of the trouble we are talking about occurred. He is not just worried about the privacy of these depositors and confidential information that goes beyond the overall bank situation; he is concerned that it inhibits good, tough examinations in the future. I certainly would share that concern.

I cannot imagine that anybody would want to do that and create an atmosphere where they were not as willing to share because of making it public.

Let me make it clear that the Freedom of Information Act, which a lot of people do not like—I happen to think it was a valuable piece of legislation to open up Government—specifically has an exemption for the bank examination process. It was not put there by accident.

The report language at the time was: "directed specifically to"—the reason they made this exemption—"ensuring the security of our financial institutions by making available only to a Government agency responsible for the regulation and supervision of such institutions, the examination, operation, and condition reports prepared on behalf of or for the use of such agencies."

It goes on to say indeed even records pertaining to banks that are no longer in operation can be withheld under exemption (a) in order to set the policy promoting frank cooperation between bank and agency officials.

This is not the regulators. That is from the report that goes with the legislation.

It is very clear what the Senate intended to do and why—so that we did not inhibit cooperation—we did not cause problems, for the very purpose my colleague from Colorado wants to achieve. I just do not think this is good public policy. That is the reason the General Accounting Office exists, to be an aid to us.

The General Accounting Office, yes, they are busy. But they certainly could go into these deals, as they are in the Bank of New England. But the very reason it was decided to ask the GAO to go into the Bank of New England and get all the information the Senator from Colorado would like to see is so it would not be made available to the general public and the depositors would not be exposed to lack of privacy.

There are ways to obtain for the Senate, any Senator, all the information that is necessary, but keeping the individual records private. Again, I do not have any objection. We go to the GAO by some other means. I think this would have a very chilling effect. I cannot imagine there are very many members of the public, when their name is constantly used, this must be public knowledge, would want their individual financial records disclosed to be read about in the newspaper. That is totally contrary to what most Members of this body talk about all the time in terms of a constitutional right to privacy.

So I just have a credible objection. I wish to pass this bill as rapidly as anyone, and I am sorry to be the one that is having to detain it. But I cannot stand by and see an amendment passed that I think is such objectionable public policy, especially when I do not disagree with the objectives of the sponsor of the legislation.

I hope there is some way we can work out some kind of a compromise where the information could be obtained, and the Senator from Colorado or any other Member of the Senate could see it, but not invade the rights of privacy of all these individual depositors in these institutions for a purpose that I do not understand, if we can obtain the information another way.

I do not intend to continue talking longer, at this point. I do not want to dominate the floor. I will obviously speak at length on other occasions.

Ms. MIKULSKI. Mr. President, if my ranking minority colleague will yield, the proponents of the amendment have indicated that it is not their desire to prolong the debate on this amendment. They, of course, can speak for themselves and would be ready to move to a vote. What would be the Senator's disposition? Would the Senator prefer to have a quorum call?

Mr. GARN. It is obvious that they would prefer to have me talk. I think they want to say more. But there are other speakers who are on their way to speak in opposition to this. I do not intend at this point to allow this to come to a vote, because I expect that they probably have the votes. This is one of those good, populous issues that sounds wonderful.

I do not know how I could emphasize more strongly that I do not object to what they want to achieve. I am frankly surprised at the lack of concern for the right of privacy by the sponsors of these amendments for those depositors and that we cannot, in some way, work out a compromise to solve that problem so we are not opening up the whole world, why we cannot work through GAO or something.

I see no purpose in making all these records public. Unless I am able to get some kind of compromise that makes this more reasonable, makes it good public policy, I will have to continue to talk or have other speakers talk, and I am not willing to go a vote, as much as I wish to finish this bill.

The PRESIDING OFFICER. Does the Senator from Maryland yield the floor?

Ms. MIKULSKI. I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. WIRTH. Mr. President, I agree completely with the distinguished chairman of the subcommittee. I would be very happy to move to a vote right now. I think the issue is very simple.

I have said this to the distinguished Senator from Utah [Mr. GARN] who has served so ably as the ranking Republican on the Banking Committee and has chaired that committee—I have said to him on a number of occasions, we are after examination reports. Examination reports do not include lists of depositors. Examination reports do not include the names and addresses and salaries of employees. Examination reports do not include lists of home loans and car loans, and so on.

We would be absolutely delighted to offer an amendment that says that that is not our intent. And we have made that offer to the staff of the distinguished Senator from Utah. And consumers are not involved in this. That is not what this is all about. We all know that. We are not after people. Mom and pop put a deposit in a S&L; that is not the issue. What we want to know is what do those examination reports say. The examination reports do not go after all of those depositors. They do not list depositors. The examination reports go after irregularities. They examine what?

What went on? What made what loan? It was not a car loan or a house

loan that brought down these S&L's. Lincoln was not brought down because somebody made a loan on a 1983 Ford Fairlane. Lincoln was brought down because other kinds of arrangements were made, and that is what is in the examination report. It is what is in an examination report that caused these S&L's to go down the chute. That is what they are examining.

The public ought to know because it is costing the public in these pre-FIRREA deals, in the 1988 package, $57 billion. These have been examined. These institutions have been looked at. The Federal Government has the information as to why these institutions went down the chute. And the public has a right to know.

I would be more than happy, and I have made this clear to the distinguished Senator from Utah: We will, by statute, exclude home loans. We will exclude car loans. Whatever he believes is an egregious problem for the small individual or whatever privacy issues are fine. That is fine. That is not the point. It is the examination reports. That is what we want to have.

We are not asking, either, as the Senator suggested, for some kind of a major new examination. They have already been done. The Steptoe & Johnson report, addressed so ably by the distinguished Senator from Nebraska, goes into this and is a report already paid for by the taxpayers. These deals are done. The taxpayer has paid for them. The taxpayer ought to know what the taxpayer has gotten with the Steptoe & Johnson report. Why not make it public? We are paying for it; $57 billion worth. What is wrong with making it public?

I do not understand why this has become such an enormous issue. Taxpayers' money is being spent by the tens of billions of dollars, and it ought to be made available to the public.

As I have said to the distinguished Senator from Utah on a number of occasions, I understand his concerns about privacy. I share them. I understand his concerns about the innocent depositor. I share them. I understand his concerns about the innocent individual who might have had a car loan from these institutions. I share them. But none of those are the subject of the examination reports. That is not what examination reports do.

Maybe the distinguished Senator from Maryland had a good idea, that we have a quorum call and see what it is that the distinguished Senator from Utah would like to see in changes in the amendment. I have made that offer last week; I made that offer the week before. Our staffs have talked together, and I would like—you know, I have no desire to prolong this bill. I want to see this bill get passed so we can move along.

Mr. GARN. Will the Senator yield?

Mr. WIRTH. I am happy to yield to the distinguished Senator from Utah.

Mr. GARN. The Senator from Utah has never even seen an examination report, so I personally have no knowledge of what is in them. I am voting from the head of the Fed and the FDIC and the regulators, who tell me what is involved. And there is our problem.

The Senator and I have had a very good relationship. We talked on many occasions. Each time the Senator from Colorado and I have talked over the last week or so, I have thought we had the basis for some compromise.

But then, for whatever reason, and I am certainly not casting blame one way or another, when our staffs meet, they do not seem to be as cooperative as the Senator and I have tried to be, and there is obviously a difference of interpretation of what it covers. The Senator's staff obviously thinks it does not; the staffs and the chief regulators think that it does get involved. I just quickly repeat, the FDIC tells me the names of borrowers and amounts; the names of large depositors and amounts; information on security and safety systems and controls will continue to apply in an assuming bank.

So they are concerned not about the brain-dead institution out of existence, but what happens to the records of a healthy assuming bank.

I will be happy to put in a quorum call and see if we can discuss this. I am not an attorney. I do not know whether the Senator from Colorado is or not. I am not capable personally of making these legal distinctions.

But there is a very definite difference of opinion, and I do not doubt that you are sincere that you do not think it covers some of these. But you should not doubt my sincerity in believing the regulators' attorneys who tell me that it does. I do not want to take that risk in opening up the privacy that names borrowers and amounts you cannot distinguish. There is no identifying information. The bill does not discriminate between the criminals and noncriminals. The theory seems to be that everyone is presumed guilty of something unless they are proven innocent.

The bill does not distinguish between those people who actually caused losses in the institution and those in fact paid loans in full or were up to date.

The Senator will understand what I am getting at in trying to protect those relationships. I certainly do not have trouble in failed institutions, of having portions of those examination reports made public. That does not bother me. But it does bother me if there is a dispute over whether the language gets into these areas. The Senator from Colorado would not like to have a loan in an institution, be fully paid up, have the institution fail, and have his name listed as somehow, by perception, part of the problem.

Mr. WIRTH. If the Senator will yield, I believe that I do have the time.

I appreciate the concerns of the distinguished Senator from Utah. Here is an examination report. He can come over and I will be happy to share it with him. This is not a public document. It is about 12 pages long. It has no list of depositors. It has no list of small loans that are made. It has five subheadings: A letter to the board of directors outlining to the board of directors of that institution what the examiners thought was the problem. The examiners laid that out in a relatively succinct letter which is 3½ pages long. It then has an appendix to that. There are four. One, a discussion and analysis of asset quality and loan portfolio management. What was the quality of assets according to the regulators, and how well was the loan portfolio managed by the institution. No list of depositors, no list of loans.

A discussion of liquidity of the institution, of how was the institution operating.

The third subheading, international, how was the institution relating to various kinds of international loans which were of concern to the regulators.

And, finally, other matters, which is a technical appendix.

I would be happy to share this with the distinguished Senator from Utah, who is entitled to look at this report. The public is not. This is one of those institutions that went down the chute on which a very significant amount of public money was spent. No innocent individuals are mentioned in here. No list of depositors. No list of small loans. The irregularities found by the institution are listed here. There is a discussion. There is a letter from the regulators to the board of directors.

Now, what we have the ability to do is to track this sort of thing. Did the regulators, on these failed institutions in 1988 deals, did the regulators write to them in 1983 and say, "You have this problem," and in 1984 say, "This problem you have continues," and in 1985, "This problem continues." We do not know, because none of this is public.

But if there is such a pattern, does that not make you wonder if either the regulators were not doing the job or the institution was being deliberately delinquent and maybe we are in a situation where some of these who have gotten off scot free ought to go to jail. I do not know. But we do not have that.

I would be happy—again I made the offer on a number of occasions to make sure we excise—auto loans was raised at one point as a problem, consumer loans, car loans, home loans, deposits. None of those are in the examination reports. We would be happy to excise them if they are.

If the distinguished Senator would like to amend this amendment by unanimous consent or whatever, I am more than happy to do so. It is not my intent to get any individuals that might be presumed innocent. That is

not the intent of this. It is to get this kind of fundamental information which goes to the management of those institutions and why they got in trouble and what they did about it. That is the intent of the amendment. That has been made very clear from the start. I think that is a very reasonable request for the American taxpayer. I am sure the distinguished Senator from Utah does as well.

Mr. GARN. Mr. President, I would be happy to look at the examination report, but I would have to assume that one report is not representative of all examination reports.

Again, I am not here representing my own feelings on examination reports, but I am amazed that we are in a debate that apparently totally disagrees with the Chairman of the FDIC, who is fairly well respected around his body, and the Chairman of the Fed. And I will quote one statement in this letter from Chairman Greenspan of the Federal Reserve System of July 10.

We are concerned about the public release of examination reports. These reports contain confidential financial information regarding individual and corporate customers of the depository institution that is not publicly available from any other source. Release of this information could represent a serious intrusion on the privacy of these customers.

I have to assume that the Chairman of the Fed and Chairman of the FDIC know what occurred. So I would suggest that it would make some sense—I do not want to preclude the Senator from Nebraska speaking—but I would suggest that at this point it would probably make some good sense to have a quorum call and sit down and see if we can separate these issues, because I do not desire to stay out here, but I am getting opinions from the chief of the regulators that we are going to be invading the privacy of individual and corporate customers.

Mr. EXON. I wonder, Mr. President, if the Senator from Colorado would answer some questions that I have with regard to this whole matter, in just a moment.

I would first like to say that one of the real problems that I think we have in government today is the use of secrecy when secrecy is not in order. We run into that all the time, Mr. President, in the Armed Services Committee, the Intelligence Committee, and certain sectors of the Appropriations Committee where there is information available to certain Members because those Members have to have that information to responsibly discharge their duties. And for national security reasons most people agree that we have to have some kind of restriction to protect the national security interest of the United States.

Now, I also am very much concerned along the lines expressed by my colleague and friend from the State of Utah, Senator GARN, with regard to the invasion of privacy. I do think, however, that maybe this cloak of secrecy, that is used all too frequently, in my opinion, to keep information from the public for whatever reason, is overdone from time to time.

My first question to the Senator from Colorado is: Did I understand the Senator from Colorado correctly to say that the document that he has before him is not a public document and is not for public release?

Mr. WIRTH. That is correct, the bank examination reports. Now, the examinations reports of S&L's are not publicly available. You cannot, as a citizen, have access to them. As Members of Congress, we do.

Mr. EXON. In the view of the Senator from Colorado, is there anything in the report that he has referenced publicly here in debate that, in the opinion of the Senator from Colorado, should not be available to the public at large?

Mr. WIRTH. Well, if the Senator will yield, I do not believe that there is material in this particular report—I do not want to cite the institution because that would not be fair to the institution—but I do not believe there is anything there embarrassing to the consumers. In fact, I think the community would be absolutely fascinated with the allegations of this report only. And, if the Senator might further yield, if there were a pattern of reports like this over a 5- or 8-year period of the regulators saying to the institution, this problem has existed over and over again, that would truly be an interesting phenomenon, I would think, as to who is delinquent in this, the regulators of the institution or what was going on.

Then who is delinquent in this? The regulators? The institution? What was going on?

Mr. EXON. Does the Senator from Colorado share my fundamental belief that all too often certain agencies of the Government throw a cloak of secrecy over a document for their own self-protection rather than for the public good?

Mr. WIRTH. I could not agree with the distinguished Senator more. I earlier said I know some regulators, I am sure, will resist this public disclosure amendment because secrecy kind of covers up the potential of error. That is very understandable. That is a natural human instinct.

Mr. EXON. I would say, Mr. President, because of the $80 billion that has already been appropriated and will be spent, plus another $80 billion that we have been alerted to by responsible Federal authority that we are going to have to provide in some form in the future, certainly I believe the people of the United States are entitled to more information on what has happened and what has caused some individual failures of some individual institutions although, certainly, without having everyone who ever deposited a penny in the institution or borrowed a penny from the institution coming out in public.

I certainly agree with the remarks made by the Senator from Utah and the Senator from Colorado in that regard.

Is there some way that, in order to bridge this impasse that we have here now, that indeed we could get together during a quorum call and work some language, as has been suggested by the Senator from Colorado, into the proposition?

I noted with great interest that the Senator from Utah had indicated that he thought they had had an understanding, but when staffs got together they could not get the job done. In my experience, in many years in public service I have found that capable staff sometimes are not nearly as capable on getting together on some details as two Governors or two Senators sitting down and working out a problem. Sometimes, staff go overboard in introducing some of their viewpoints into a particular situation that are not necessarily shared by the Senator or the Governor who are trying to reach a common ground.

From listening to the debate, it seems to me at least from what has been said here on the floor today, there is little, if any, difference between what the Senator from Colorado wants to do and what the Senator from Utah wants to do and has agreed to. Possibly, going into a quorum call and having a discussion among the principals involved—the two managers of the bill, and the Senator from Colorado who, I think, has offered a very worthy amendment—maybe we can just bring this to a speedy conclusion and we can move ahead on what I understand from what I have listened to here on the floor this afternoon is the desire of all parties.

Mr. WIRTH. If the Senator will yield?

Mr. EXON. I am happy to yield.

Mr. WIRTH. I know the disease of overzealous staff has never infected the staff of the Senator from Nebraska nor mine, but there are other Senators who have problems.

Mr. EXON. I must say it has invaded mine from time to time, but it is corrected as quickly as I find out about it.

Mr. WIRTH. I am very happy to preclude anything that invades privacy, as suggested by the distinguished Senator from Utah. I have no intent of doing that. It is these fundamental reports that ought to be made public.

If the Senator might yield further I want to make his day with just a few more numbers on this, to depress my colleague a little more about the size and scope of the S&L disaster.

The Senator correctly referred to an $80 billion commitment so far and another $80 billion that we are looking down the gun of. I, unfortunately, am

going to tell my colleague that that is all post passage of FIRREA, which is the legislation that occurred in the spring of 1989. Since the spring of 1989 there is a commitment of $160 billion.

What we are talking about here is what happened up until 1989 and that is a mere $57 billion. So this is in addition to the $160 billion to which my colleague referred. What we are talking about here is just the introduction to that. That is the preliminaries. Those were the deals made in 1988 and were made up until FIRREA passed in 1989. So that is a total of $217 billion out-of-pocket so far.

Mr. EXON. Mr. President, does the Senator from Colorado feel, as I do, that if we could have a better understanding, not only as Members of the Senate but also for the constituents whom we represent who have to dig up the money to pay for the shortfall, in the hundreds of billions of dollars—without getting specific as to what it is—if we could find out about it, it may indeed help us make some changes in the management of the system in the future so we will have a better understanding of what mistakes, if any, were made in the regulatory operation and investigation and reports?

It seems to me, one of the main reasons I would like to see the amendment adopted, the amendment offered by the Senator from Colorado, is that my friend and colleague, Senator KERREY, has been very instrumental in trying to bring about a total restructuring of the oversight system. I was with him from the very beginning on this. We are finally getting some attention now, that maybe we better had better take a look at it. It would seem to me even though we have a tendency to botch things from time to time, there is no way the Senate of the United States, by getting involved in this, could possibly botch the matter any worse than it has already been botched.

I hope and believe the main reason for agreeing to the amendment offered by the Senator from Colorado is simply to give the Senate and the people of the United States, the taxpayers who have to pay this, a better understanding as to how we can keep this from happening, as best we can, again in the future. Would that not make a major contribution to the amendment of Senator KERREY, cosponsored by this Senator? Would that not help us out, trying to figure out how we should best go forward? In other words, learning from the mistakes of the past as we, hopefully, move to a brighter and better mechanism in the future?

Mr. WIRTH. I certainly believe that is the case. That is one of the purposes of this; to understand who struck John and what went wrong.

Mr. EXON. I thank the Chair and the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. KERREY. Mr. President, I rise again to isolate a bit of the secondary amendment I offered to the amendment by the distinguished Senator from Colorado. I would appreciate hearing from the distinguished Senator from Utah, some comments as to why the disclosure of the Steptoe & Johnson report itself, the full report, is not a reasonable thing for this Congress to require?

Indeed, I am suggesting that by putting in the law the language that we want that report made public, we provide a support to the RTC Board itself, the very same board which is actually the Board of the FDIC—we provide a support and reinforcement for them to make a decision that they are obviously fearful of because of concern for potential legal action.

I understand the frustration of my distinguished colleague from Utah who has been involved in this for many, many years. There is obviously some concern that perhaps there are partisan elements injected into this debate. But Steptoe & Johnson were selected for that very reason. Steptoe & Johnson were selected. Instead of having Congress do an analysis which would have been suspect, instead of having Congress do the analysis of the 1988 deals, we went outside and we got an independent evaluation. That was the intent.

Steptoe & Johnson's analysis is a nonpartisan analysis and full disclosure of the report keeps this debate, I believe, on a nonpartisan basis.

But when there is doubt about what is being withheld and there is doubt about what is still there, not only do we have questions that go unanswered, but the public has questions that go unanswered and perhaps, most important in this particular instance, the public's representative, the press, has questions that go unanswered.

Again, I remind my colleagues, this report was released on December 26, 1990. The request went into Steptoe & Johnson by the press, by the public, for the full report. And those requests were turned away. First, because we were told that the additional information that are all names, none of which are depositors, none of which are small borrowers, but all individuals who were involved in the decisions which the independent analysis, the nonpartisan analysis concluded that some of the decisions were part of an unfair procedural process. It is not identifying this as something that occurred as a consequence of malicious intent, not as a consequence of real conflicts of interest, but just difficult procedures to establish, unfair procedures having been observed by Steptoe & Johnson.

It is impossible for us to sort out what we must do in the future to avoid that sort of thing if we do not have the opportunity to do analysis of the individuals and the decisions that they made to reach the conclusions about what the procedure ought to be.

Mr. President, the full release of this report should have occurred long ago. I appreciate and understand the concern the distinguished Senator from Utah has about privacy for small depositors and borrowers, but I do not understand the concern that underlies the opposition of release of this particular information or, at the very least, Mr. President, Congress going on record of supporting that full disclosure of this report, a report, Mr. President, that we requested.

I remind my colleagues, the law says that there will be an independent analysis. That analysis will be released to Congress and to the RTC. I assume by releasing it to Congress, it means we are the representatives of the people and thus going to be released to the people itself.

No, that is not what happened. Steptoe & Johnson and the RTC over concern for I do not know what, germaneness in the first instance, lawsuits in the second, said, no, we are not going to release all the information, thus putting us in the position where we have to read this entire report and try to determine ourselves whether the information should be released.

Mr. President, they have not made a compelling case for withholding information from the public. Thus, it seems at the very least in the Steptoe & Johnson case, they are transactions involving taxpayer money that we are voting on in considering this particular piece of legislation, $15 billion of taxpayer money, where the transaction was on behalf of the taxpayers, that they have a right to know all the information involved.

I am not asking for release of all the background information, all the interviews, all the voluminous details. All that information I am not asking to be released. But the final report, Mr. President, should not be allowed to be censored by Steptoe & Johnson out of concern on their part for germaneness or, in the second, in the instance for a lawsuit.

I would appreciate it if the distinguished Senator from Utah could perhaps provide me with some comments to guide me to be able to judge as to whether or not his opposition to Senator WIRTH's underlying amendment includes strong feelings about the release of all the information in the Steptoe & Johnson report.

Mr. GARN. I apologize to the Senator from Nebraska. I was trying to work out a compromise on another amendment and did not hear his request.

Mr. KERREY. Mr. President, I will summarize it. I said that I am sympathetic with the frustration that was obviously expressed earlier in the distinguished Senator's opening remarks, in particular focusing on the partisan nature sometimes that has been injected

into the debate about the savings and loan problem and the need to restructure a solution and bring additional capital into that. The debate has, from time to time, degenerated into partisan bickering.

Nonetheless, my observation is, and perhaps I am incorrect, but my observation is that the independent analysis done by Steptoe & Johnson was done for precisely that reason, to avoid the partisan bickering. In fact, it is described as a nonpartisan analysis. We did not have a congressional committee look at it. We had an independent analyst look at it. They did their investigation. They reached their conclusion. They drafted a full report, and on their own made a decision reinforced now by the RTC to remove some of the information so that the public does not have access to it.

The question was whether or not the distinguished Senator from Utah had strong feelings about releasing the full report and, thus, would have strong feelings about opposing the intent of my amendment which is, A, to say that report should be released and that, B, it actually addresses the difficulty that the RTC Board faces, which is trying to answer the question as to whether or not there could be some legal recourse and thus saying to the RTC Board we will take an action that would reinforce the desire to make full disclosure.

Mr. GARN. I thank the Senator from Nebraska. Again, I apologize for requiring him to repeat. We were trying to work out another amendment compromise.

Let me at the outset say that all of my remarks, as the Senator from Nebraska is aware, were directed to Senator WIRTH's amendment, because I have not seen or was not aware that the Senator from Nebraska was going to offer an amendment. Therefore, I have only had a brief time to look at it while the debate has been going on.

In general, I do not object to release of the report in my cursory review of it, but I am aware that, again, there are some elements of privacy. I am informed that it identifies all of the bidders and their employees as well as all Federal employees and officials involved in Federal savings and loans.

My off-the-top-of-my-head opinion is there are elements that may fit the debate I was making against the amendment of the Senator from Colorado. I would have to take a closer look at these elements to see, but in general, I do not have a problem any more than I in general have a problem with release of an examination report if we are not getting into the privacy area of disclosure of individual private information.

Mr. KERREY. Mr. President, I appreciate that. I have spent some time with the full report. I must say that there are clearly some examples that I think 100 Senators will say, "This is ridiculous, this information should be released." When you get 100 Senators looking at it and say, for gosh sake, you are not releasing the name of a board member on a Federal Home Loan Bank Board, the Senator is saying that is not germane?

Mr. GARN. If the Senator will yield. I am not disagreeing with the general premise. I am saying I have not had the opportunity, having been made aware of the amendment a half-hour ago, to go into any depth.

Mr. KERREY. I appreciate the response of the distinguished Senator from Utah.

I point out to my colleagues that this is a request I have been making for some time. On March 20, 1991, Chairman Seidman of the FDIC agreed to make the unedited version public. That was during a meeting of our appropriations committee, VA/HUD and independent agencies committee. Then again during the Senate Banking Committee hearing in May of this year, again I asked Chairman Seidman if he would supply this information and he indicated that they were going to look into it once more.

I want to make it clear, though I respect the difficulty of receiving this amendment 30 minutes ago, my intent to try to get this information has been well known for some time. In fact, Mr. Seidman, the Chairman of the FDIC, personnally said in front of our committee that he had no objection to releasing the information.

The dilemma, Mr. President, is that every Member of the United States Senate now, I believe, has an obligation to read the report and try to determine how much this information should be made public. As I said, and I trust the distinguished Senator from Utah is correct that there are some in here who would say, for gosh sakes, why do you not release that information; almost 100 of us would say that ought to be released. Once my colleagues see that, as I have done—I have seen some information in here that I can see no reasonable indication for withholding from the public.

As a consequence of that, it causes me to say release the entire document because you have not made a compeling case at all that this information ought to be withheld. You have gone too far, in short, in withholding information from the public out of concern, as I said, for germaneness in the first instance and lawsuits in the second.

You have gone too far.

Mr. President, again I ask my colleagues to consider this kind of transaction. There are other examples away from the savings and loan problem, that can guide us. There are other examples where individuals approach Government. They ask for some sort of contractual arrangement, a contractual arrangement is produced, and there may be questions as a consequence of examining it, and all the details then become available.

We have had hearings where full disclosure is concerned. I have seen Senators rise with great concern if it is a child care program or education program. I would suggest that if it was a school funding issue at the local level, if they said to us that the information was being withheld because some individual had determined it was not germane or they were concerned that perhaps an employee was going to be sued, we would be outraged, Mr. President.

Somehow in this particular transaction we are all too willing to protect. I think we have gone too far. I think the public has an absolute right to know.

I have examined the document myself. I regret that I had to spend any time at all examining the document. It seems to me, Mr. President, this should have been released to the public, the public should have had this information last December when the law firm was assigned as a result of law to do an independent analysis presented to Congress and presented to RTC the results of that analysis. The full anlaysis should have been made public. But instead we all have to read the report and examine it and try to determine.

Mr. President, we are being asked to do more than we should. This report simply ought to be released, and my amendment merely reinforces a judgment that I believe Mr. Seidman at least and I suspect a majority of the board itself would like to do but they are concerned. I think we should eliminate that concern by enacting this amendment.

I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER (Mr. LAUTENBERG). The Senator from Missouri.

Mr. BOND. Mr. President, I rise to discuss the Wirth amendment. Certainly I have heard many of my colleagues talk about need to get the information on what really went wrong in the savings and loan mess. Some of us have been working on that information a very long time. I happened to have had the privilege of serving on the Banking Committee beginning back in 1987, and I heard our distinguished ranking member of this committee, Senator GARN, the ranking member of the Banking Committee, talk at great length about the need to move and to move quickly to recapitalize the FSLIC so we could start closing institutions using the premiums paid by the savings and loan industry so we would lessen the need ultimately for what has turned out to be a terrific taxpayer bailout.

Now, last year I worked with my colleague from Connecticut, Senator DODD, to get adopted by this body and ultimately to get adopted by the House and accepted by the administration a

proposal to set up a savings and loan commission. This is a commission, a bipartisan, nongovernmental commission, that is to report to us, to give us information on what went wrong.

Mr. President, the funding for that is being held up in this bill. I hope we can move on and get that commission funded so we can have the experts who have been selected by the President, by the majority leader, by the Speaker get to work on it. I want to find out what the details are just as much as any colleagues do.

I heard it mentioned a few minutes ago that certainly having the Senate involved could not make matters any worse in the savings and loan crisis. That has to bring a smile to everybody's face because when you have a $150 billion black hole, it obviously took a lot of teamwork to get there in the first place. I do not think that either House of Congress nor the State legislators nor the regulators nor the industrialists nor the professionals who advised it are going to escape scot-free. There are going to be a lot of fingerprints on the body when we start to take a look at it.

As far as this amendment goes, I think, quite frankly, it has some very dangerous, unintended consequences.

Now, should the deals in 1988 be examined? Of course. That is what we directed our investigatory body, the General Accounting Office, to do. We asked them to go in and look at these deals, to see what happened, and to report back to this body and the House of Representatives what actually went wrong, what mistakes were made. Has there been criminal conduct? If so, there are prosecutorial bodies to examine it, prosecutorial mechanisms to pursue wrongdoers. There are also civil remedies. And where there has been wrongdoing, I expect—and we have every right to demand—that the Department of Justice, the U.S. attorney, that everyone involved will bring appropriate criminal actions.

We have our own watchdogs, the GAO, overseeing and looking at all that underlying information so that we can be assured if they are doing the job properly or if we can be warned if they are not.

Now, why do the people who are knowledgeable about banks, why does FDIC Chairman Bill Seidman say we should not adopt the Wirth amendment? There is an exemption in the Freedom of Information Act, exemption 8, that says it does not apply to matters "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

The House report back in 1966 said, "This exemption is designed to insure the security and integrity of financial institutions, for the sensitive details collected by Government agencies which regulate these institutions could, if indiscriminately disclosed, cause great harm."

The courts have recognized the importance of the current law which prohibits examination reports from being publicly disclosed, No. 1, to assure the security of financial institutions that such disclosures might undermine public confidence and cause unwarranted runs, and, No. 2, to ensure frank communication between bank employees and examiners.

These exam reports contain names of borrowers and amounts, names of large depositors and amounts, unsubstantiated statements attributed to employees or management that would intimidate future free communication with open banks, information on security, and safety systems and control that would continue to apply in the bank taking over the institution; information affecting civil and criminal legal actions that would give unfair advantages to the other party; salary and benefit information on employees. That is why Chairman Seidman in his July 10 letter to Senator GARN said you have to understand the nature of the contents of the reports of examination. They contain detailed descriptions. The reports contain very sensitive financial information about the bank and its operations which, if publicly disclosed and thereby available to competitors, could place the insured institution at a substantial competitive disadvantage, and, finally, it destroys the trust and confidence between the examiners and the employees of the institution.

Chairman Seidman also warned that the regulatory agencies also would be required to release exam reports for many healthy, open, insured institutions and this is one of the things to which I think we ought to call attention.

The Wirth amendment, as I read it, would require that any holding company which acquires one of these sick institutions under the 1988 plan would have to disclose all of their information as well.

This is a very broad disclosure. This could affect still open institutions. It could have a devastating effect. It could drive away customers from the institution, significantly cripple these institutions, and wind up costing the taxpayers far greater dollars.

I tell you one thing it would do for certain. When we have problems getting purchasers for these institutions willing to put up their dollars so the taxpayer does not have to come forward with the bucks to close a sick institution, if all of the details of the acquiring institution, their most secret, competitive information is revealed and exam reports were disclosed, nobody in their right mind in a financial institution would ever step forward and say I will take a sick thrift off your hands.

This is one more reason why the Wirth amendment would have a chilling effect and would, if anything, ensure that the current tremendous estimates of the cost of resolving the insolvent thrifts and the costs of dealing with sick banks would be far higher because nobody would touch one of these things if their innards, their internal workings, their most secret financial information would be spread across the public domain.

For this reason, Mr. President, I strongly urge my colleagues to reject the Wirth amendment.

Mr. METZENBAUM. Mr. President, I rise to commend the Senator from Colorado and the Senator from Nebraska for addressing themselves to this issue. I do not know of any single instance in Government where the people know less about where their money is being spent than in connection with the settlements of these deals.

What Senator WIRTH is saying with his amendment is that the people are entitled to know. I do not see now how anybody can be opposed to letting the people know.

There is a crowd down there at the Resolution Trust Corporation that somehow got in their head the idea that they own the Nation, and that they do not have to share with the people of this country the facts, the reality, and how their money is going out the door ever single day of the week. They do not have any reservations about coming here and saying the last time we needed $22 billion, this time we need $15 billion. And in the interim, some of the amendments that I put in last time, they have not done a thing about it. They give us gobbledygook. They give us just conversation.

I think the Wirth amendment as amended by the Kerrey amendment does exactly what should be done.

I was involved when we were trying to get the Steptoe & Johnson report. You could get the report after you battled but you could not find out how they got to it. It was one of those reports that was used by the agency in order to help them achieve their objective.

What is wrong with the truth? What is wrong with the people understanding how billions and billions and billions of their dollars are going out the door?

The only issue I take with my colleague from Colorado is about the merits of his amendment. The only issue I take with him is that he does not use the correct figure. This does not involve $57 billion. This involves in excess of $80 billion. And maybe more than that.

When we stand here on the floor day in and day out fighting for $200 or $300 million for some program meaning something to kids in this country, meaning something as far as education

is concerned, meaning something as far as the homeless are concerned, we never can find the money. It violates the budget. It is not in accordance with the agreement. But $15 billion is what is involved in this bill for the RTC to continue paying out, and Senator WIRTH is saying let us know the facts. How did you give away the money in the past? Who had entry to come into your door and make the deal? Why did you give them so many hundreds of thousands or millions of dollars or billions of dollars? There was not any question about it. Some people had a better go than other people had.

You ask a lot of people in this country. They will tell you that they went to the RTC and they asked if they could get in to talk about taking over some of these deals. Oh, no, the door was closed.

I spent as much time on this subject as any member of the Banking Committee has spent on it trying to find out how these deals were put together, why they were put together, why somebody who had a criminal record was able to get one of these deals. We have tried and conducted hearings in trying to push the RTC to reopen, renegotiate and rescind those deals. The RTC will not do it.

The last time we told them to certify to us and give us information with respect to each of the deals, and what we have gotten is pabulum. We have gotten nothing. We have gotten soft, sweet talk. We have gotten the minimum that they could give us in order to comply with the statute.

I say that the Wirth amendment is exactly the kind of amendment that we need to let the people know what the facts are. Let us find out how those deals were made. Let us find out who had the entry to get in the door. Let us find out why the settlements were made, how much it cost the American taxpayer.

I think the Wirth amendment as amended by the Kerrey amendment is good legislation. I think we should adopt it and adopt it promptly. The American people are entitled to know how their money is being spent and the RTC is not willing to make that information available.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Thank you, Mr. President.

I ask unanimous consent that the pending Kerrey amendment 795 and the pending Wirth amendment 794 be temporarily laid aside in order to permit the managers to dispose of a series of amendments that have been cleared on both sides.

The PRESIDING OFFICER. Is there objection?

Mr. WIRTH. Reserving the right to object, before the request for unanimous consent was offered, Mr. President, I was going to explain an amendment which I will offer by asking unanimous consent which would exempt all of these little individuals of concern to the distinguished Senator from Utah. During this period of time, while it is set aside, I will show this amendment to Senator MIKULSKI and to Senator GARN and explain it. I think this will solve his problem and we can move right along.

Ms. MIKULSKI. I thank the Senator.

The PRESIDING OFFICER. Is there objection?

Mr. GARN. Reserving the right to object, I will not object, I think the unanimous-consent request makes sense to proceed with the bill. I would like to make certain that we do reserve the right for Senator MACK to offer an amendment if he so desires. I understand if he does, he will talk about it and withdraw it. But I have not been able to check. So I would only reserve that right for Senator MACK to offer his amendment.

The PRESIDING OFFICER. Hearing no further objection, the unanimous-consent request is agreed to.

AMENDMENTS NOS. 796 AND 797

Ms. MIKULSKI. Mr. President, I send two amendments to the desk and ask unanimous consent that they be considered and agreed to en bloc, and that the motions to reconsider the votes be laid upon the table en bloc. They have been cleared on both sides and do not affect the 602(b) allocation.

The first amendent provides $500,000 within an available fund for a social-service center in Kansas and provides $1.155 million from within available funds to install new sirens in Kansas.

The second amendment is a modification to an earlier amendment offered en bloc regarding the GAO study of FHA.

I understand this technical change has been cleared on both sides.

I urge adoption of the amendments offered en bloc.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI], for Mr. DOLE, proposes an amendment numbered 796, and for Mr. DECONCINI, proposes an amendment numbered 797.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments considered and agreed to are as follows:

AMENDMENT NO. 796

On page 31, line 18, insert before the period: "including $500,000 for the city of Kansas City, Kansas to operate a social service center".

On page 77, line 4, insert before the period: ", notwithstanding section 201 of P.L. 100-707, including $1,155,000 to install new sirens in Kansas with a twenty-five percent local match in towns under 5,000 and a fifty percent local match in towns over 5,000."

Mr. DOLE. Mr. President, the old saying, everybody talks about the weather but never does anything about it, is almost always true. But when it comes to the severe weather we experience in Kansas, we cannot afford to just talk—we have to act.

Recently, I joined with Federal and State agencies to bring advanced early warning severe-weather sirens to 90 Kansas communities in 34 counties statewide. As a result of this cooperative effort, our State was to receive in the next year 152 surplus warning sirens that promised to give some of our smallest and most unprotected communities the life-saving notice they may need in the event of a weather emergency.

Just this month, officials at the Federal Emergency Management Agency discovered many of these sirens were in poor condition and under emergency circumstances, may fail when needed. In fact, I am advised that the cost of repairing a significant number of these sirens is more than replacing them with new equipment. This amendment would direct FEMA to purchase 152 new sirens and send them to the 90 Kansas communities who were expecting the used ones. Also, this amendment will allow the town of Andover to acquire two new sirens, if they desire, to provide better protection for their citizens.

Because this is new equipment, this amendment would require towns with populations less than 5,000 to pay a 25-percent share of the cost of purchasing, transporting, and installing the equipment. At this price, tornado protection appears to be a bargain.

EVERY SECOND COUNTS

With tornadoes and other severe weather a constant threat to our way of life, we need to do everything we can to fight back against the powerful forces of nature. Anyone who lives in Kansas knows that every second counts when severe weather is rolling across our State. The National Weather Service and local broadcasters do an outstanding job in relaying up-to-the-minute weather advisories, but without the piercing wail of a siren, many of our communities will never get the kind of warning they need to protect themselves. During the past 2 years, Kansas has been rocked with some of the most destructive tornadoes in our history—particularly in Andover where the difference between life and death may have been decided by the failure of their siren. That is proof enough for me we need action.

The Federal Government and the State of Kansas may not be able to stop tornadoes, but they can use their limited resources to protect lives, bringing needed severe-weather protection to thousands of Kansans, many in towns with no early warning systems

whatsoever. Government has no higher purpose, and I am proud that as a result of this amendment, many small towns in Kansas will be better prepared than ever to ensure that natural disasters do not bring human tragedy.

Mr. President, I would ask that this money be transferred from national preparedness to civil defense and that this be reflected in the statement of managers and in the conference report.

AMENDMENT NO. 797

SEC. . GENERAL ACCOUNTING OFFICE STUDY OF THE FEDERAL HOUSING ADMINISTRATION'S MUTUAL MORTGAGE INSURANCE FUND.

The General Accounting Office shall prepare and submit to Congress no later than April 1, 1992, a study of the actuarial soundness of the Federal Housing Administration's single family mortage insurance program and the solvency of the Mutual Mortgage Insurance Fund. The study, using existing studies (including the study entitled "An Actuarial Review of the Federal Housing Administration's Mutual Mortgage Insurance Fund") and employing the latest reliable data available, shall analyze the actuarial soundness of the Mutual Mortgage Insurance Fund and the ability of the Mutual Mortgage Insurance Fund to meet the capital ratio targets established in the Omnibus Budget Reconciliation Act of 1990 under various economic and policy scenarios. Factors considered in the analysis shall include, but shall not be limited to, the following:

The actuarial performance of all cohorts of loans insured by the Mutual Mortgage Insurance Fund, including all available post-1985 books of business. Specifically, the overall default rates and claims (loss) experience of these loans should be considered.

The effect of the Mortgage Equity rule issued by the Department of Housing and Urban Development, which limits the amount of closing costs that can be financed with a Federal Housing Administration mortgage to 57 percent of the total amount of allowable closing costs, on the actuarial status of the Mutual Mortgage Insurance Fund, default rates of Federal Housing Administration borrowers, the relative impact on purchasers of homes at various price levels, and the ability of potential Federal Housing Administration borrowers to purchase homes.

The effect of underwriting changes made by the Federal Housing Administration since 1986.

The effect of the increase in the insurable maximum mortgage amount that was made permanent in the National Affordable Housing Act and the effect of further increasing the maximum mortgage amount.

The impact of a policy to allow "streamlined refinancing" whereby the borrower would not be required to pay an annual premium.

The Federal Housing Administration's accounting method for deferring and amortizing the Mutual Mortgage Insurance Fund single-family one-time premium revenue.

The valuation of delinquent loans for loan loss reserve accounting purposes.

The impact of various assumptions regarding the rate of real home price appreciation and mortgage interest rates.

The effect of various economic conditions, including favorable, mortgage, and adverse conditions, on the ability of the Mutural Mortgage Insurance Fund to build adequate capital levels.

Ms. MIKULSKI. We now move to two amendments that are also, as part of the unanimous consent, to be offered by the Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, I thank the Senator from Maryland.

AMENDMENT NO. 798

(Purpose: To amend section 21A of the Federal Home Loan Bank Act to extend the period applicable to single family property in the Affordable Housing Program)

Mr. METZENBAUM. 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 Ohio [Mr. METZENBAUM] proposes an amendment numbered 798.

Mr. METZENBAUM. 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. . EXTENSION OF PERIOD APPLICABLE TO SINGLE FAMILY HOUSING.

(a) IN GENERAL.—Section 21A(c)(2)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)(2)(B)) is amended by striking "3-month" each place it appears and inserting "5-month".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to eligible single family properties acquired by the Resolution Trust Corporation on or after the date of enactment of this Act.

Mr. METZENBAUM. Mr. President, the amendment that is at the desk would help the American dream of home ownership become a reality for more low-income Americans. This amendment which modifies the Financial Resource and Recovery Enforcement Act of 1989, otherwise known as FIRREA, is designed to assist low-income home buyers and help them take full advantage of the special marketing period for single-family homes in the affordable housing inventories of the Resolution Trust Corporation.

When FIRREA was originally passed, there were 90 days within which home buyers would have an opportunity to be able to obtain the homes that were to be sold that were available by reason of taking over the savings and loans.

Realistically speaking there was not enough time, because while the home buyer was trying to find out the value, trying to find where the home was, trying to find out whether or not it could or could not be financed, it became almost an impossible situation. As a consequence, the very poorest people in the country who wanted to buy these homes, middle-income wage earners, people who were looking forward to having an opportunity for the first time in their lives to own a home, were not able to obtain it, to get even into the bidding process. This amendment would extend that to 150 days; 5 months instead of 3 months.

It is my understanding that the amendment is acceptable to the managers of the bill.

When FIRREA was passed, a 3-month marketing period was included to give low-income homebuyers a window of opportunity to submit a bid on a home without having to compete with the savvy real estate speculators. Experience has shown that the marketing period is simply insufficient given all the steps required to prepare a home for sale, and the effort and time needed to submit a bid and complete a sale.

The Affordable Housing Program created under FIRREA was an attempt by Congress to salvage something from the ashes of failed institutions for those individuals who in all honesty had nothing to do with the entire savings and loan debacle. The working man and woman. For too many of these people the dream of home ownership has become more and more an idealistic dream and yet under FIRREA we were given the unprecedented opportunity to assist many low-income Americans realize their dream of home ownership.

Yet when we included the affordable housing provision in FIRREA the White House complained, it moaned, and insisted that the Government had no business marketing low-income homes to the low-income taxpayers as a part of legislation designed to sell the assets of failed savings and loans. With the Affordable Housing Program the RTC has taken the White House objections to heart.

Last month we read in the New York Times and the Wall Street Journal about the failures of the Affordable Housing Program to market eligible properties to qualified buyers. Last week Mr. John Henneberger, director of the Texas Low-Income Housing Information Service testified before the House Committee on Banking, Finance and Urban Affairs about his experience with the Affordable Housing Programs in Texas. In short, he offered four observations:

First, the RTC has failed to accurately investigate, evaluate, and report on the performance of the program;

Second, the RTC has failed to undertake adequate marketing efforts;

Third, the RTC has failed to use its existing authority to implement the program; and

Fourth, the RTC has failed to list all eligible properties.

Mr. Henneberger came up with one last observation for the committee; Congress needs to make necessary changes in FIRREA so that the program will work effectively. I am offering this amendment today so that the working man and woman who wants to purchase a home from the RTC will have a reasonable chance to do so.

Mr. President, I would also like to pay tribute to the two members of my staff who helped develop this amend-

ment: Irving and Bea Zeiger. Irv and Bea were volunteers on my staff this past spring.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 798) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 799

Mr. METZENBAUM. 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 Ohio [Mr. METZENBAUM] proposes an amendment numbered 799.

Mr. METZENBAUM. 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:

Insert on page 95, after line 12, the following:

"The Office of Inspector General of the Resolution Trust Corporation shall review by September 30, 1993, each of the agreements described in section 21A(b)(11)(B) of the Federal Home Loan Bank Act and determine whether there is any legal basis sufficient for rescission of the agreement, including but not limited to, fraud, misrepresentation, failure to disclose a material fact, failure to perform under the terms of the agreement, improprieties in the bidding process, failure to comply with any law, rule or regulation regarding the validity of the agreement, or any other legal basis sufficient for rescission of the agreement. After such review has been completed, and based upon the information available to the Inspector General, the Inspector General shall certify its findings to the Resolution Trust Corporation and to the Congress.".

Mr. METZENBAUM. Mr. President, I believe this amendment goes very much to the whole question of the 1988 deals and the whole question of the manner in which the RTC has been conducting themselves.

This amendment specifically requires the inspector general of the Resolution Trust Corporation to investigate each of the 1988 deals for fraud or other wrongdoing to determine whether there is a legal basis to rescind the contracts.

The 1989 bailout law, the so-called FIRREA legislation, required the RTC to scrutinize each of the 1988 deals and look for ways to save taxpayers money. But among other things, RTC was specifically required to exercise all legal rights to rescind or force the renegotiation of a deal where there is a finding of illegal actions.

With the passage of FIRREA, I had hoped that the RTC would review the deals according to Congress' specifications. I was wrong—100 percent wrong. They did not do a darned thing. In the almost 2 years since the passage of FIRREA, the RTC has done little more than spend millions of dollars on studies, one of which was referred to previously by Senator KERREY, the Steptoe & Johnson review.

In fact, there were three studies that were done. The RTC is great with respect to studies, but they are not very good with respect to action and saving the taxpayers money. The first study was completed in September 1990, and they told us no more than what is self-evident: The Government made rotten deals, and the Government can exercise options in the contracts to buy back assets and pay off promissory notes.

I think they spent $3½ million, if my recollection serves me right, for that study. That study did not answer one of the most pressing questions concerning the 1988 deals, and that is: whether any of the deals could be rescinded because of fraud or other illegal actions.

Let us not forget what the 1988 deals were all about. The 1988 deals were made in the closing hours of 1988, when the RTC—I guess it may have been called something else at that time; I am not sure whether it was FSLIC, or whatever—in the closing hours were negotiating and completing deals with some of the sharpest businessmen in this country, some of them who had the best in with the politicians in this country.

They were putting deals through in the closing hours of 1988, because the law changed on December 31, 1988, at midnight. The law permitted them, at that time, not only to make the deals, to give unbelievable amounts of subsidies to bail out these savings and loans to new buyers, but it permitted them to give tax relief into the future.

If it were not enough to give tax relief, it permitted those who bought those savings and loans to take the tax benefits in order to reduce the taxes of the parent company, not only of the savings and loan. Some of the smart boys came in, and they were well represented, and those who repesented them were very well paid. They made some great deals. We are not talking about deals for $10,000 or $100,000 or $100 million. We are talking about deals for billions of dollars. The Government made one heck of a lot of rotten, rotten deals.

The American people do not know about this, but they know they have been had, and they do not understand quite why, or why people did not do more to protect them. I say to you, without fear of contradiction, that there were those in Government making those deals who were irresponsible to the people they were supposedly representing. I say that there were people making those deals who did not know what they were doing, and that people on the opposite side of the table knew very well what was going on. I say that the Secretary of Treasury, Mr. Nicholas Brady, has to accept a major share of the responsibility for those rotten deals made in 1988, because during the Christmas holiday that year, this Senator and the chairman of the Banking Committee, Senator RIEGLE, called him on the telephone when he was down in the Caribbean, and said: "Mr. Secretary these deals do not serve the American purpose; these are not fair to the American people. Nobody knows what is going on in these deals, and they are going out the door. Stop it, stop it, before the American taxpayer is taken for more than he or she has already been taken for."

Mr. Brady called back and said he was not inclined to do so, and was not sure he had the authority to do so. I say, I do not know whether Nick Brady had the authority to do so or not. But if the Secretary of the Treasury told those in charge of making the deals to stop it, nobody would have questioned whether he had the legal authority.

What we do not know is whether an acquirer profited at the expense of Government because of illegal acts that could serve as a basis to rescind the contracts, or how they were able to make those deals. The Government did not know what they were doing. The sharp boys on the other side of the table knew very well what they were doing. They were taking the American taxpayer to the clearner.

After the September 1990 study, the RTC assured us that their next studies, one focusing on the so-called Southwest plan deals, and the other, the so-called conventional deals, would answer these questions, and more. Both of these studies were completed in December and focused on the bidding and negotiating processes.

The December studies were equally lacking and disappointing. Studies, studies, studies, but no action. They did not answer the questions we needed to have answered. The studies go to great lengths to describe the various bidding processes used by the bank board, but they do little more.

It is unbelievable to me, as I stand here, that there are people in Government who were in a position to know, who could have done more, and who did so little. What motivated them to be so lackadaisical or unconcerned or indifferent? This Senator does not know.

With respect to the Southwest plan study, we are told that the plan did not provide the same opportunities for all potential bidders to compete on a fair and equitable basis. I know of people who said they called and said they wanted to bid, not necessarily on those particular deals, but they were people who had money, and they wanted to know how to get into the process, and the door was slammed shut right in

their faces. They never had a chance even to offer a competitive proposal.

Does this mean that bidding and negotiating processes were not competitive? If not; why not? Was there any basis to undo the contracts because of irregularities in the bidding process?

These are questions that should have been answered, but were not. And I do not think the American people will ever know. If the Wirth amendment is agreed to, maybe we will learn a little bit more.

But why have we not learned already? Where are all those so-called responsible officials in government at the RTC who have not been willing, despite the amendments that were put on this bill last year that cost the American people $22 billion? We put amendments on saying the RTC had to provide us with more information to do more than they had been doing, but they have not done it. They have laughed in our face, and they thought we were a bunch—I do not know what they thought we are down here in Congress, but I know they thumbed their nose at us.

The law firm doing the study, Steptoe & Johnson, said it was not asked to address the questions as to why the bidding and negotiating processes were not competitive and whether or not there was any basis to undo the contracts because of irregularities in the bidding process.

Steptoe & Johnson, who I think owe the American people some explanation as to why they took the money for this study and did not really come to any reasonable or logical conclusion, said, "We did not understand our task to have been to make findings as to violations of the law."

That is exactly what we told them to do in FIRREA, and I believe Senator KERREY, from Nebraska, is 1,000 percent on target. My staff and I fought to get a copy of that report. It was not easy. You would have thought that they owned it, that they paid for it. We finally got a copy, but we could never get the backup information in order to see how they were able to arrive at their conclusions. But their contributions certainly did not address themselves to reality of the problems that exist in this area.

Then there was the second December study on the bidding process, and that was equally lacking. The authors of that study are a law firm in my own city of Cleveland, Baker & Hosteller. They said, "Our mission was not to evaluate the economic terms of any transaction or to investigate for fraud or wrongdoing."

What did we need the studies for? Not to evalute the economic terms of the transaction to see whether the deal is good or bad and not to investigate for fraud or wrongdoing? If they were not given that assignment, they should have been given that assignment. If they were given that assignment and they concluded it was not their mission, then it was their fault. But my guess is the former is the case.

Both studies should have been looking for irregularities in the bidding and negotiating process. Such findings could have served as a legal basis to rescind the contracts or serve as a basis to force the renegotiation of the contracts. This could have ultimately led to savings for the Government.

Any irregularities should have been reported to the appropriate Government agency for further investigation and possible litigation or prosecution.

Both studies failed miserably in their task of telling us whether any of the deals could be rescinded because of fraud or other wrongdoing.

The RTC has wasted a great deal of precious time and a tremendous amount of taxpayer money on useless studies that are of no real value and, in my opinion, look to me like nothing more than stalls.

The RTC has simply ignored the specific mandate in the FIRREA legislation.

I even suggested to the RTC that they might use private law firms on a contingency fee basis to do the job—to do their job—since, obviously, they were refusing to do it themselves. A number of prestigious law firms were willing to enter into such an arrangement even though that was not their normal method of practice.

In response to my suggestion, the RTC told me that they plan to do what? Yet another study to determine whether there were legal grounds to rescind the contracts.

They also told me that they plan to ask law firms to conduct a study pro bono, for free.

Mr. President, I know when somebody is giving me gobbledygook. I know when somebody is giving me phony talk. And I say to the people at the RTC, "You have been trying to bull us. You are giving us phony talk. You are trying to give us gobbledygook. When you are talking, you come to us regularly and ask for $22 billion, $15 billion in this bill, and coming for a heck of a lot more before it is all over, billions of dollars. And all you have for the Congress of the United States and people of this country is a lot of conversation, and you are not even willing to tell the facts as to how you made these deals, you are not even willing to act aggressively to try to rescind some of the deals if there were any illegalities. Whose tune are you playing? For whom do you work? Why is it you and the RTC can hold your heads high and walk down the street while the American people are being ripped off and you are not doing anything about it?"

The RTC was willing to pay outside counsel to do what amounted to meaningless studies, but was not willing to hire these firms on a contingency basis, which is without cost to the Government unless there is a recovery, in order to seek legal grounds to save taxpayer money. No, the RTC was not willing to do that.

Last year, the RTC asked this Congress for $22 billion to make payments on the 1988 deals and to restructure the deals by exercising options that are in the contract, such as prepaying notes. They told us, wonder of wonder, they could save $2 billion by doing that. Sure, they made the bad deals, knew they are going to pay off the people who put some money into them, they are going to give them cash in advance sometimes, much, much more money than they actually put into the deals, and, hooray, we are going to be saved, not going to be had, for $22 billion, we are going to save $2 billion on that.

We gave them the money but required them to provide the Congress with monthly reports, on a case-by-case basis, describing any action taken on the 1988 deals.

In addition, the RTC was specifically required to certify to Congress for each deal that a determination has been made as to whether there is a legal basis to challenge and possibly rescind the deal.

I stood here on the floor and had no difficulties with respect to the manager of the bill, but the fact is there were others in this body who were not willing to accept the amendment. And the RTC was sending word we do not want the amendment, and it was only when I threatened to stand here and keep the bill here as long as necessary that we were able to get the amendments in.

I want to make it very clear that the manager of the bill, Senator MIKULSKI, was completely cooperative and completely supportive and that it was others who stood in the way of making that possible.

Finally, when it was clear that the bill was not going to move unless those amendments were adopted, we got them into the bill.

I am frank to say to you it was my hope that by requiring that kind of reporting and certification, the Congress would ensure that the RTC would finally review the legality of the deals. I expected that the RTC would finally fulfill its obligations under FIRREA.

Mr. President, I was wrong again. When asked whether the RTC has reviewed the 1988 deals, to determine whether there was fraud or other illegal action involved, the RTC again told my staff, what do you think? That they planned to do another study. They have to be the most studious people that I have ever met in my entire lifetime because they are constantly having new studies, new studies. But this one is going to be better than the previous studies because this one they want to call together a think tank to study the issue. I do not know what is

different about a think tank studying than Steptoe & Johnson studying the issue and Baker & Hostettler. It seems to me the Government officials do not need studies. They need to act.

When asked today whether the new study has been started, the RTC responds it is in the works, it is in progress. Absolutely nothing has been done. We are getting nothing from the RTC but a lot of begging for more taxpayer money and empty promises.

The Judiciary Subcommittee which I chair conducted oversight hearings on one of the 1988 deals, the Bluebonnet deal purchased by James Fail. Those hearings revealed that the Bluebonnet deal involved favoritism, poor Government staff work, huge Government subsidies to James Fail, political intervention. And with respect to James Fail, he was a man, who, due to his prior legal troubles, should never have been eligible to take over a thrift. In short, there were numerous grounds, including misrepresentation, to seriously consider rescinding or forcing renegotiation of the contract.

What has the RTC done about James Fail? Absolutely nothing. But James Fail has been busy. I might refresh your recollection and tell you that James Fail is the man who was able to get into this deal by putting $1,000 of his own money, period, $1,000 of his own money. While the RTC sits on its thumbs, James Fail has the nerve to sue the Government for allegedly interfering with the thrift he acquired from the Government as a result of his alleged misrepresentation.

Now, I have heard it all, but I say to you that to a Government that has been pouring out millions and, if I am not mistaken, billions of dollars to enrich Mr. Fail and to make it possible for him to go forward with his deal in that magnificent building which he operates down in Texas, what does he do? He does not even have the courtesy to say thank you. He is a pretty smart fellow. He just turns around and sues the Government, sues the Government. I do not know what for. But instead of being on the defensive, Mr. Fail takes the offensive. I remember when I practiced law I always thought that was a pretty good way of proceeding.

If the RTC is not trying to sell us a bill of goods with more useless studies, all the while begging for money, they are trying another tactic. They tell us that neither FIRREA or the certification legislation specifically tells them that they must review the legality of the deals. According to the RTC if we wanted such a review, we should have required the inspector general to do it.

This is just another instance where the RTC is operating as an entity accountable only unto itself. It has chosen time and time again to thumb its nose at the Congress.

The RTC has not scrutinized each of the 1988 deals as they were instructed to do by this Congress. The RTC has not even attempted to exercise its authority to rescind, or force the renegotiation of the deals where there was misconduct such as fraud or misrepresentation. The RTC has failed miserably in its responsibility to the public and in complying with its congressional mandate.

It has been almost 2 years since FIRREA required the RTC to review the 98 deals that comprised the 1988 deals to determine if the contracts can be rescinded. It has been 8 months since Congress gave the RTC $22 billion to resolve the 1988 deals. To date, the RTC has only resolved one of the deals; 1 out of 98. Can you imagine? Only one has been concluded.

And here we are again. The RTC is here with its hat in hand asking for $15 billion more to resolve the 1988 deals.

I am determined that the RTC will be held accountable for its actions. I think I am well enough informed that I am soon going to be getting an answer, "Well, we did not know," it should have occurred. We now have a new director of the RTC, because all the rumor mills indicate that the present director of the RTC is going to be leaving that position.

I do not know whether he is or he is not. But I can predict to you with certainty that this administration will find him to be a fall guy for all the things that did not happen while he was in control. And I say to you that no one person can be the fall guy. It is the fault of this administration.

It goes back to Nick Brady when he refused to stop the deals from being made. It is the fault of this administration in not wanting to do anything with respect to the dealings that were made. It is the fault of this administration for being willing to have an open door for certain fixers and have the door slam shut for many others. I am determined that the RTC will not act as an entity of its own—out to do whatever it pleases—including ignoring Congress.

My amendment is yet another attempt to make the RTC review the legal sufficiency of the 1988 deals. This time though, it makes it clear that the inspector general of the RTC has the duty to review the 1988 deals to determine whether there are legal grounds to rescind the contracts based on illegal acts.

And, as each Member of Congress knows, the inspector general is an independent operation, not responsible to the RTC, only responsible to itself and to the Members of Congress and the administration; I am not even certain it is responsible to the administration. I do know it is responsible to Congress and that we always can turn to it for a clear and unequivocal answer.

Specifically, the amendment requires the inspector general of the Resolution Trust Corporation to review each of the 1988 deals to determine whether there is a legal basis to rescind the deals, such as fraud, misrepresentation, improprieties in the bidding process, or any other legal basis sufficient for rescission of the agreement. Once the inspector general has completed his review, the inspector general is required to certify his findings through the RTC and the Congress by September 30, 1993.

Mr. President, it is my hope that the inspector general will act more promptly and as he reviews the deals that he will be reporting the conclusions of those results. I am pleased to have accepted an amendment, suggested by our colleagues on the opposite side of the aisle, that by September 1993, he has to complete his works. I think that is the way it should be.

It is my hope that any ambiguity the RTC has as to what is expected of them has been made abundantly clear by my amendment.

I last heard that my amendment is acceptable by the managers of the bill, and if it is I am prepared to proceed to ask the Senate to act on it.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 799) was agreed to.

Mr. GARN. Mr. President, I appreciate the cooperation of the Senator in being willing to modify his amendment so that it was acceptable. However, I might have put a time limit on his speech, if I had known before I accepted it. But it is acceptable.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 800

(Purpose: To provide for funding for community action agencies under the HOME Investment Partnerships Act, and for other purposes)

Ms. MIKULSKI. Mr. President, I send to the desk and ask for its immediate consideration, an amendment which has been cleared on both sides. This amendment permits community action agencies to participate in the HOME Program, and I urge its adoption.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI] proposes an amendment numbered 800.

Ms. MIKULSKI. 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 in the bill, add the following new section:

SEC. . The limitation on assistance under section 234(b) of the Cranston-Gonzalez Na-

tional Affordable Housing Act shall not apply to community action agencies as specified in section 673 of the Omnibus Reconciliation Act of 1981, with respect to funds made available under this Act, whenever expended.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 800) was agreed to.

Ms. MIKULSKI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Ms. MIKULSKI. 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.

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

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

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the only amendments remaining in order be the Kerrey amendment No. 795, the Wirth amendment No. 794, and a Garn amendment relative to 794 and 795; and that upon the disposition of these amendments, the Senate without intervening action or debate proceed to vote on final passage of H.R. 2519, the VA-HUD appropriations bill.

Mr. WIRTH. Reserving the right to object, Mr. President, I would like to speak on the reservation and ask a question if I might of the distinguished Chair of the subcommittee.

First, would it be possible on the Wirth-Kerrey amendment to add to the unanimous consent a time agreement so that we can just vote on the Wirth-Kerrey amendment?

Ms. MIKULSKI. I am advised by the ranking minority member that is not acceptable.

Mr. WIRTH. As I have said to the distinguished Chair over and over, I have no desire of holding up this bill. I just think this is an important issue of public policy that we ought to have a vote on. I am very happy to have a vote and time agreement and let us vote on it. But there is an objection to that, is that correct?

Mr. GARN. If the Senator would yield, yes, there is an objection. No one more than the managers of the bill would like to complete this bill. But as long as I consider the amendment of the Senator from Colorado very bad public policy. Yes I am willing and I will take the blame. I am willing to delay the bill. And our staff has been negotiating. I have not heard the results of that negotiation. But at this time, I would object to a time agreement on the amendment.

Mr. WIRTH. Further reserving the right to object, do we have a copy of the other amendment? We have seen the Kerrey amendment. I certainly know what the Wirth amendment is. There is a third amendment involved in the unanimous-consent request.

Mr. GARN. Again, if the Senator will yield, I cannot give the Senator a copy of the amendment because that is a place-holding amendment as protection for me, depending on what the negotiations end up with.

Mr. WIRTH. Is this an amendment relating to the discussions? This is the amendment that would be produced by staff negotiations, is that correct.

Mr. GARN. That is a possibility. I hope it is not necessary to offer an amendment. We can obviously offer changes to the amendment of my colleague by unanimous consent but it is a place-holding amendment which at this point does not have any substance to it. That is all.

I am not trying to play any games with the Senator. It is simply a place-holding amendment.

The PRESIDING OFFICER. Is there further objection?

Mr. WIRTH. I just do not know what that place-holding amendment means and protecting the rights of Senator KERREY—I was trying to find Senator KERREY—maybe we could add to the unanimous-consent request the possibility of adding another blank place-holding amendment to make sure the Senator's rights are protected. If that is all right we could add this to the unanimous-consent request.

Mr. GARN. I have no problem putting in a Kerrey place-holding amendment.

Mr. WIRTH. That applies only to this business before us, a Wirth-Kerrey amendment.

Ms. MIKULSKI. Relating to title IV.

Mr. WIRTH. That would be relating to the Wirth or Kerrey amendment, a Wirth-Kerrey amendment.

The PRESIDING OFFICER. Will the Senator please propound that unanimous-consent agreement again?

Ms. MIKULSKI. I ask unanimous consent the only amendments remaining in order be Kerrey amendment 795, the Wirth amendment 794, a Garn place-holding amendment to 794 and 795, and a Wirth-Kerrey place-holding amendment to 794, 795, and the other place-holding amendments; that, upon disposition of these amendments, the Senate without intervening action or debate proceed to vote on final passage of H.R. 2519, the VA-HUD appropriations bill.

Mr. WIRTH. Further reserving the right to object if I may, Mr. President, is the thrust that there would be a vote only on final passage? Senator KERREY and I made it very clear we would like to have a vote on the Wirth-Kerrey amendment in whatever disposition.

Ms. MIKULSKI. Since the amendments are in order, that I have propounded in the unanimous-consent request, it would be presumed that any processes associated with the normal discussion of amendments would be followed. Meaning we would have votes on the amendments unless there were objection.

Mr. WIRTH. Will the distinguished managers agree to include in the unanimous-consent request to have a record vote on whatever?

Ms. MIKULSKI. I would like to dispose of this unanimous-consent request.

Mr. WIRTH. Let me ask if included in this unanimous-consent request it is possible to include also unanimous consent there be a recorded vote on the Wirth-Kerrey amendment?

Mr. GARN. On or in relation to. In other words, that simply means that if and when the debate ends you reserve your right to have a vote either tabling up or down. "Or in relation" would give the opportunity to have one or the other. From a practical standpoint, it makes no real difference. Because I do not know when we will quit talking about it. I still hope we can resolve our differences. I do not have a report back from negotiations while this discussion is going on.

I am not trying to play games. I want to reiterate how important the public policy of this is to me. If the Senator wants to add "on or in relationship to," I have no objection to that.

Mr. WIRTH. I ask unanimous consent that be added to the request of the distinguished Senator from Maryland.

The PRESIDING OFFICER. The Senator from Colorado is advised that a record vote cannot be obtained by unanimous consent.

Mr. WIRTH. I understand.

Ms. MIKULSKI. Did my colleague object to the unanimous-consent request?

Mr. WIRTH. I was adding to the unanimous-consent request that I wanted to see if we could get a record vote. I think Senator GARN and I have an understanding that on or in relation to that we will have a record vote, so that I have no objection to the unanimous-consent request of the Senator from Maryland.

The PRESIDING OFFICER. Will the Senator from Maryland restate the unanimous-consent request so the Chair has it?

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the only amendments remaining in order be the Kerrey amendment, 795, and the Wirth amendment, 794, and a Garn amendment relative to 794 and 795, and a Wirth-Kerrey amendment relative to the Garn amendment, a place-holding amendment; that upon disposition of these amendments the Senate, without intervention action or debate, proceed to vote on final passage of H.R. 2519, the VA-HUD appropriations bill.

The PRESIDING OFFICER (Mr. WELLSTONE). Without objection, it is so ordered. The Senator from Utah.

NASA COMMERCIAL SPACE INITIATIVES

Mr. GARN. Mr. President, a matter which concerns me as we consider this appropriations bill is the reduction our committee made in the initiatives of NASA to stimulate and encourage commercial applications of space technology and private exploitation of opportunities in space.

Indeed, it is a fundamental goal of our civil space program to foster opportunities for the private sector to utilize the technologies yielded by governmental expenditures in space research and development for improved manufacturing processes, products, and services which can add to our Nation's economic strength and competitive position in the world.

Mr. President, in years past we could be content to let our private industry exploit new technologies and opportunities simply on the basis of blind luck and chance. Unfortunately, those days have past. The U.S. leadership in science and technology which was virtually unchallenged across the board only a few years ago, has gravely eroded in the face of determined investment strategies of our major trading partners in the world. Moreover, technologies developed overseas or made available to our overseas competitors from the United States are being applied in new commercial products manufactured by them at an accelerating pace far outstripping that of our domestic industrial sector.

So not only is our crucial lead in advanced technology being eroded, but our ability to exploit such technologies in competitive commercial products is also falling behind. We see the consequences of these changes in our burgeoning trade deficit.

Mr. President, I am pleased that NASA is taking the initiative to reverse this decline in American competitiveness. Rather than simply waiting for technology to filter out into industry on its own, NASA is aggressively reaching out to our private industrial sector to tell them of these new technologies and assisting interested parties to incorporate these improvements in commercially viable new products and services.

In addition, NASA is working with the private sector to investigate opportunities where industry can meaningfully participate in Government sponsored activities in a partnership which is not only more efficient and economical to the Government, but also economically viable as a private venture. Such an example is the proposal of Spacehab, Inc., whereby this company, using privately raised risk capital is preparing to develop and fabricate an expansion module for the space shuttle which will greatly expand opportunities to conduct experiments while in orbit.

Having spent a few days in orbit in the cramped compartments of the space shuttle, I can personally attest to how valuable and useful such a module would be. And also having spent the last 15 years engaged in congressional oversight of the budgetary requirements for Government developed hardware, I have every confidence that a technically competent and economically motivated private entity can secure this additional capability at least as efficiently as direct Federal procurement, and potentially, a lot cheaper, faster, and with greater potential utilization and participation by other private sector interests.

Of course this is a departure from business as usual and legitimate questions are being raised as to the ramifications of some of the relatively novel arrangements being developed. Furthermore, because a venture like Spacehab is dependent on the Government maintaining its commitments to schedule and flight opportunities, there needs to be adequate budgetary resources to cover potential contingencies should the Government not be able to follow through.

Mr. President, I am therefore concerned with the large reduction made in the space commercialization activities of NASA, both for ventures such as Spacehab, and for other meritorious and promising commercial opportunities. I therefore expect to revisit the needs of this activity in NASA when we go to conference with the House, and hope that we are able to augment the funding levels here in order to effectively encourage greater private sector participation in our Nation's civilian space program.

Mr. President, I ask unanimous consent that an excellent article on these issues, as they confront Spacehab, from the July 8 Washington Post be printed in the RECORD at this point.

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

[From the Washington Post, July 8, 1991]

FLIGHT OF FRUSTRATION

(By Sandra Sugawara)

For officials of Spacehab Inc., the final countdown has started as they attempt to answer the question: Just how easy will it be to make a buck in space?

On paper, it looks like Washington-based Spacehab should be a pretty good bet. The National Aeronautics and Space Administration said there is definitely a need for its product—a 10-foot-long pressurized module that fits in the cargo area of the space shuttle, expanding the cramped living and storage quarters.

Early responses to the Spacehab module have been encouraging. Although the module is not schedule to begin flying on the shuttle until 1993, Spacehab already has a backlog of $250 million in orders and projected 1993 revenue of $80 million.

James T. Rose, assistant administrator for commercial programs at NASA, point to Spacehab's success in bringing together various legal, insurance and financial institutions to secure the financing as a valuable model for other companies hoping to launch their own for-profit space ventures.

But Richard K. Jacobson, Spacehab president and chief executive, said if there is a moral to this story, it is far more complicated than that. He said Spacehab's story should be viewed as a cautionary tale by other companies thinking of embarking on a similar journey.

A space entrepreneur, said Jacobson, has to attempt to persuade banks and insurance companies to trust the federal government, which he said is very difficult. The executive also must try to persuade Congress and NASA to act like a commercial company, also nearly impossible, Jacobson said.

Bankers who were interested in lending millions of dollars to Spacehab were incredulous when they entered the world of government contracting, where they learned that NASA can unilaterally cancel contracts and where Congress can cut funds for Spacehab, no matter what long-term commitments NASA has made.

"I think the government should start to look at things and act like a commercial enterprise," said William Rockford, managing director of Chase Manhattan bank, which agreed to lend money to Spacehab only after Spacehab got insurance from Lloyd's of London to cover political contingencies such as budget cuts.

The Bush administration is sympathetic to those concerns, according to one administration official involved with space policy.

"The commercial guys have been telling the government this for a long time," the official said. "The financiers have been telling the entrepreneurs this for a long time. It's one of the things that has to be addressed before it's going to be possible for many of these commercial ventures to succeed."

The White House issued commercial space policy guidelines in February that authorized NASA to compensate companies if their projects are terminated. But the guidelines stated that NASA must come up with the termination payments out of its own budget, something unlikely to happen during these days of tight budgets.

Furthermore, Congress appears to be in no mood to give in to the recommendations of the commercial sector that it surrender its right to make annual appropriations. In fact, the House Appropriations Committee said it was alarmed by efforts by Spacehab and other commercial ventures to use contracts signed by NASA to obtain bank loans. Such financial deals mean that Congress cannot cut funds for those programs in future years without putting the commercial venture and banks in precarious positions.

"It's the worst kind of back-door spending," said Rep. Bob Traxler (D-Mich.), chairman of the House Appropriations subcommittee with jurisdiction over the NASA budget. "There's a serious principle involved here, the constitutional responsibility of Congress to appropriate funds. Agencies ought not to have blank checks. That's what this is, even though the contracts say they're subject to appropriations."

In response to concern over the Spacehab contract, the House in June passed an appropriations bill that included a provision limiting the ability of other companies to use long-term NASA contracts to raise money. The House also cut the fiscal 1992 funds that NASA requested for commercial space projects. If the Senate concurs and NASA decides the cuts should come from the Spacehab program, those reductions could force Spacehab to renegotiate its loan.

"What's going to happen is anybody's guess," Jacobson said. "That's what's wrong with the whole system. You can't depend on

the government. A contract has no meaning. It will always be subject to appropriations."

Spacehab is located in a small suite of offices across the street from NASA, near the Smithsonian Institution's National Air and Space Museum. Jacobson moved the offices there when he joined the company in 1987, knowing that he would have to spend hours each week walking the halls of NASA to make Spacehab's case.

Jacobson, a former McDonnell Douglas Corp. executive, has assembled a small team of space industry and NASA veterans who should feel right at home at NASA, including Spacehab Chairman James Beggs, who as NASA administrator in the early 1980s played a major role in pushing the concept of privatizing space; Vice President Chester Lee, who was the NASA official who determined what payload each shuttle would carry; and general counsel Neil Hosenball, who was NASA's general counsel.

Spacehab has eight employees and little of the technical work has been done by company employees. For instance, Spacehab hired consultants to draw up the original designs. Likewise, it hired McDonnell Douglas to oversee the entire development and construction project, and Alenia SpA, the Italian aerospace company, to build the outer shell of the module.

So what does Spacehab actually do? It owns the aluminum module, which will double the living space for astronauts and quadruple the storage space for experiments. When the module is completed, Spacehab will lease the facility. "We're more like real estate developers," Jacobson said. "We are responsible for funding, contracting and marketing."

Whether Spacehab investors make a profit will depend on how many times the government agrees to fly the module and whether enough corporate clients can be found to rent the locker space the government does not want. About one-third of the space will be available to commercial customers in the six scheduled trips.

Originally Spacehab was conceived not as a plan for shooting experiments in space but as a scheme for putting tourists into space. In 1983, Robert Citron, a former Smithsonian Institution scientist who was living in Seattle, figured there would be a sufficient number of adventurous people willing to pay $1 million for the ultimate vacation.

Perhaps not surprisingly, NASA wasn't too keen on the idea. But a consulting firm advised him that the plan could be salvaged if the module were made to carry laboratory experiments instead of tourists.

Company executives spent the next few years peddling the Spacehab idea around the world. By 1986, Spacehab had raised nearly $2 million, largely from friends and space enthusiasts. It was enough to keep the doors open, but not enough to build the module. Then the space shuttle Challenger exploded in January 1986, dampening almost all interest in space by the financial community.

Sensing that they needed help from someone with more knowledge of the space industry, Spacehab officials launched a nationwide search for a chief executive and for a corporate partner in the spring of 1986.

That's where Jacobson entered. At 66, he had reached the mandatory retirement age at McDonnell Douglas and was preparing to spend his days on the golf course. But one day, his boss presented him with an alternative plan: If Jacobson, a former Air Force pilot who had spent 23 years at McDonnell Douglas, would run Spacehab, McDonnell Douglas would agree to become Spacehab's prime contractor and direct the development of the module.

Jacobson joined Spacehab in February 1987, and soon discovered the company didn't have any money to pay him. His first fundraising effort—an attempt to go public—flopped when investment houses told Spacehab to come back after its modules were flying.

In the spring of 1988, however, Spacehab thought its financial problems were solved. The Taiwanese government said it was interested in funding the entire project, which was estimated at that time to cost $75 million.

Taiwan's interest stemmed from its inability to formally participate in NASA programs because the U.S. government does not officially recognize it as a nation. Taiwanese officials saw Spacehab as a back-door way into space activities in the United States. But before the final documents could be signed, the president of Taiwan died. The new president decided his country had more pressing concerns here on Earth, like sewers, roads and schools. The Taiwanese government, however, did encourage a group of Taiwanese industrialists to invest in Spacehab, and they provided about $10 million in 1989.

Jacobson also found significant interest in Japan. Mitsubishi Corp. put together a seven-company consortium that included Mitsubishi Heavy Industries, Japan Airlines and Shimizu Construction, which was interested in building bases on the moon. The group invested $10 million.

By late 1989, Spacehab had commitments for about $40 million from corporate investors, but it needed far more money to finish the project. It turned to Chemical Bank in New York. After determining that Spacehab needed an additional $104 million, Chemical Bank agreed to underwrite 50 percent of that and lined up Mitsubishi Trust Bank and Industrial Bank of Japan to provide the other 50 percent.

Soon, however, the banks began to get spooked by several aspects of the Spacehab deal. In particular they were concerned that federal law allows agencies like NASA to cancel their contracts with private companies whenever the government deems it necessary, and that Congress has the ability to kill funding for political or fiscal reasons.

"If a commercial bank is going to be lending into a market that is yet to be defined, you have to look for longer-term commitments from someone with deep pockets," said Rohan Paul, vice president of Chemical Bank. He said because few commercial companies currently use space for experiments, Chemical Bank wanted to make sure the government had a long-term commitment to use Spacehab.

The negotiations dragged on for months. At one point, the banks went to NASA and asked the agency to guarantee the loan. Rose said that NASA did not have the funds to do that. NASA also did not want to sign a contract for the flights until Spacehab had a loan. But the banks didn't want to lend money to Spacehab until it had a contract in hand.

By the spring of 1990, the Industrial Bank of Japan had gotten cold feet and dropped out. Chemical Bank brought in two French banks, Banque National de Paris and Paribas, and restructured the deal so each of the four banks had a 25 percent share. That meant that there was no lead bank, and Spacehab was required to negotiate with four parties.

In desperation, Spacehab hired the New York law firm of Milbank, Tweed, Hadley & McCloy, hoping to move things along more quickly, but negotiations continued to stall.

"None of [the bankers] were used to having a revenue contract subject to political events," said David G. Stoller, the Milbank, Tweed partner who handled the negotiations for Spacehab. "As a group, they really struggled with it. But no matter what we tried when we would close a door, a window would fly open. They were frustrated. They wanted to convert this into the kind of deal they were comfortable with."

After repeated prodding from Jacobson, NASA finally agreed that if it signed a contract with Spacehab it would make progress payments. That meant Spacehab would not have to wait until 1993 for its first payments, reducing the amount Spacehab needed to borrow to $64 million. Despite the break, the deadlock with the banks continued.

As the Sept. 30, 1990, deadline for reaching a deal approached, Stoller contacted a friend of his, William Rockford, who was the head of project finance at Chase Manhattan. "We got him on the phone at the 11th hour and briefly described the deal," said Stoller.

On Sept. 30, the Chemical Bank deal expired and on Oct. 1, Spacehab accepted Chase's commitment letter and the entire negotiation process started over.

This time, however, some other things fell into place for Spacehab. Despite the lack of a bank loan, NASA finally signed the contract with Spacehab in November, agreeing to lease the module for six flights at a total cost of $184 million. Spacehab received its first progress payment of $7.96 million last week.

After about two years of laborious discussions, Spacehab was able to persuade Lloyds of London to insure the module project against various risks, including acts of Congress. The insurance cost Spacehab $16 million for three years, but Rockford said that without it, there would not have been a deal.

Rose of NASA praised Spacehab's tenacity and creativity in putting together the deal. "It's one of the first times that conventional banks have loaned money to a commercial group trying to develop a facility for space application," Rose said. "Perhaps you'll see more and more of this beginning to flourish."

But with Lloyds of London's many financial problems and with the chance that Congress may not appropriate enough money to lease all six flights at the rate to which NASA has agreed, Jacobson questions whether other executives will have the same insurance option that he had.

Jacobson and Rockford argue that if commercialization of space is a priority, then the government is going to have to protect commercial ventures from congressional appropriations decisions that could cut anticipated funds.

The Bush administration has said the commercialization of space is a priority. Supporters expect commercial ventures to work more quickly and creatively outside the federal space bureaucracy. They also argue that by allowing commercial ventures to own their products and lease them to the government, the United States is helping to build a profitable space industry.

The commercialization of space also has supporters in Congress. Rep. George E. Brown (D-Calif.), chairman of the House Science, Space, and Technology Committee, which has oversight over space programs, said he and many members of Congress "wholeheartedly support the rapid commercialization of space."

Brown also acknowledged, however, that the current federal budget deficit will prob-

ably result in a slowdown of the kind of contract that Spacehab received, until there is a clearer picture of how much money will be available in the future.

"We are anxious to encourage the privatization of space," said Traxler, the appropriations subcommittee chairman. "But we don't want the government to be paying for the privatization of space and others to be reaping the benefits."

Traxler said if investors are going to profit from these projects, they should be willing to take risks. He also suggested it might be cheaper for NASA to own Spacehab rather than lease it, and NASA acknowledged it had not done a cost analysis to determine the cheapest method.

In the future, Traxler said, NASA should come to Congress before signing contracts for commercial ventures if it wants more funding stability. "I could conceive of a situation where Congress would agree to fund X number of dollars [in future years]. It is not impossible," Traxler said. But he quickly added, "We have been reluctant to do this in the past."

Despite all this, Jacobson, who is scheduled to retire in September after his four-year detour at Spacehab, said he remains an optimist about the commercial potential of space.

"I don't think there's any question that commercialization will be successful," said Jacobson, who will be succeeded by Alvin L. Reeser, an executive at United Technologies Corp. "The question is when."

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. I thank the Chair.

(The remarks of Mr. BURNS pertaining to the introduction of S. 1501 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

ADDITIONAL COSPONSORS

Mr. WIRTH. Mr. President, I ask unanimous consent that Senators DASCHLE and WOFFORD be added as cosponsors of the Wirth amendment.

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

Mr. WIRTH. Mr. President, we have attempted to resolve this issue. The Senator from Utah and I have gone back and forth on this, and we are very close. The Senator had been concerned about some items, as earlier stated, related to secured loans, home loans, automobile loans, small depositors, and so on, which we were happy to exempt. We agreed that should be done.

An impasse remains as to what a loss was that is going to materially harm an insured depository institution. We appear to be down to that, with the difficulty of defining it. I think that information ought to be made public; others do not. That is where we are.

The Senator has a very legitimate concern about the protection of small businesses and partnerships, but how that gets defined becomes a problem. So we have reached a valid impasse, I am afraid. I was hoping we would be able to get this worked out and proceed. I am happy to yield to the Senator from Utah.

Mr. GARN. I thank the Senator. The Senator from Utah is disappointed that we could not reach an agreement. It is particularly frustrating, because I do not think we disagree in concept, but we apparently cannot get our attorneys to agree. I think that is unfortunate that we are not able to come to some closure. If all of the examination reports were as the one the Senator had earlier, that is all they had in them, we would not even be debating this. Unfortunately, many of them contain far much more information than I feel should be disclosed as far as individuals.

I am sorry we cannot come to some agreement and wrap this up. Unfortunately, we are in that position, and in the Senator's original form, I obviously cannot accept the amendment. We are at an impasse, and it is unfortunate that we could not gain a compromise.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. 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.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the majority leader, following consultation with the Republican leader, may proceed at any time to the consideration of H.R. 2699, the District of Columbia appropriations bill for fiscal year 1992, notwithstanding the provisions of rule XXII; further, that when the bill is considered, the only amendments in order other than the committee amendments be the following: Managers' technical amendments; that upon the disposition of these amendments the Senate, without intervening action or debate, proceed to third reading and final passage of H.R. 2699, the D.C. appropriations bill.

Mr. DOLE. Mr. President, reserving the right to object, and I shall not object, I just point out I would assume that if the wheels come off the wagon on some other matter before this is completed, would it be in order to modify that one other amendment could be in order by the Senator from Texas? I do not think it will happen.

Mr. President, I withdraw my reservation.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, FISCAL YEAR 1992

Mr. MITCHELL. Mr. President, pursuant to the authority granted to me and following consultation with the Republican leader, I now ask the Chair to lay before the Senate H.R. 2699, the District of Columbia appropriations bill for fiscal year 1992.

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 2699) making appropriations for the government of the District of Columbia, and other activities chargeable in whole or in part against the revenues of the said District for the fiscal year ending September 30, 1992, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Appropriations, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

H.R. 2699

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the District of Columbia for the fiscal year ending September 30, 1992, and for other purposes, namely:

TITLE I

FISCAL YEAR 1992 APPROPRIATIONS

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA

For payment to the District of Columbia for the fiscal year ending September 30, 1992, $630,500,000.

FEDERAL CONTRIBUTION TO RETIREMENT FUNDS

For the Federal contribution to the Police Officers and Fire Fighters', Teachers', and Judges' Retirement Funds, as authorized by the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; Public Law 96-122), $52,070,000.

[OFFICE OF THE MAYOR

[For a Federal contribution to the District of Columbia for the Office of the Mayor, $52,000.**]**

METROPOLITAN POLICE DEPARTMENT

For a Federal contribution to the District of Columbia for the Metropolitan Police Department, $75,000, of which $25,000 shall be for an accreditation study by a recognized law enforcement accrediting organization and $50,000 shall be for community empowerment policing programs.

BOARD OF EDUCATION

For a Federal contribution to the District of Columbia, **[**$1,100,000, of which $600,000 shall be for renovations to public school athletic and recreational grounds and facilities and $500,000 shall be for maintenance, im-

provements, and repairs to public school facilities under the Direct Activity Purchase System (DAPS): *Provided*, That the $500,000 provided for DAPS shall be returned to the United States Treasury on October 1, 1992, if the amount spent by the District of Columbia out of its own funds under DAPS and for maintenance, improvements, and repairs to public school facilities in fiscal year 1992 is less than the amount spent by the District out of its own funds for such purposes in fiscal year 1991] *$1,130,000 for the District of Columbia Public Schools: Provided, That $550,000 shall be for renovations, maintenance, improvements and repairs to public school facilities, including athletic and recreational grounds; $330,000 for the Options Program; and, $250,000 for the Parents as Teachers Program.*

DISTRICT OF COLUMBIA GENERAL HOSPITAL

For a Federal contribution to the District of Columbia General Hospital, [$12,000,000, of which $10,000,000 shall not be available for obligation until September 30, 1992 and shall not be expended prior to October 1, 1992] *$900,000.*

TRAUMA CARE FUND

For a Federal Contribution to the Trauma Care Fund, $10,000,000: Provided, That these funds shall not be available for obligation until September 30, 1992 and shall not be expended prior to October 1, 1992.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

For a Federal contribution to the District of Columbia for the Department of Housing and Community Development for a site-specific study of the Municipal Fish Wharf to complement a study of the entire Southwest waterfront being completed by the Department, $200,000.

FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

For a Federal contribution to the District of Columbia for the Fire and Emergency Medical Services Department, $949,000.

DEPARTMENT OF HUMAN SERVICES

For a Federal contribution to the District of Columbia for the Department of Human Services for the breast and cervical cancer screening program, $500,000.

DISTRICT OF COLUMBIA INSTITUTE FOR MENTAL HEALTH

For a Federal contribution to the District of Columbia Institute for Mental Health to provide professional mental health care to low-income, underinsured, and indigent children, adults, and families in the District of Columbia, [$1,000,000] *$426,000.*

CHILDREN'S NATIONAL MEDICAL CENTER

For a Federal contribution to the Children's National Medical Center for a cost-shared National Child Protection Center, $3,000,000, *together with $6,000,000 to become available October 1, 1992.*

GEORGE WASHINGTON UNIVERSITY MEDICAL CENTER

For the construction and renovation of the George Washington University Medical Center, $250,000, pursuant to Public Law 101-590 (104 Stat. 2929), together with $16,750,000 to become available October 1, 1992, $16,500,000 to become available October 1, 1993, and $16,500,000 to become available October 1, 1994.

DIVISION OF EXPENSES

The following amounts are appropriated for the District of Columbia for the current fiscal year out of the general fund of the District of Columbia, except as otherwise specifically provided.

GOVERNMENTAL DIRECTION AND SUPPORT

Governmental direction and support, [$111,973,000] *$110,921,000: Provided*, That not to exceed $2,500 for the Mayor, $2,500 for the Chairman of the Council of the District of Columbia, and $2,500 for the City Administrator shall be available from this appropriation for expenditures for official purposes: *Provided further*, That any program fees collected from the issuance of debt shall be available for the payment of expenses of the debt management program of the District of Columbia: *Provided further*, That notwithstanding any other provision of law, there is hereby appropriated $8,326,000 to pay legal, management, investment, and other fees and administrative expenses of the District of Columbia Retirement Board, [of which $1,000,000 shall be derived from the general fund and not to exceed $7,326,000] *and* shall be derived from the earnings of the applicable retirement funds: *Provided further*, That the District of Columbia Retirement Board shall provide to the Congress and to the Council of the District of Columbia a quarterly report of the allocations of charges by fund and of expenditures of all funds: *Provided further*, That the District of Columbia Retirement Board shall provide the Mayor, for transmittal to the Council of the District of Columbia, an item accounting of the planned use of appropriated funds in time for each annual budget submission and the actual use of such funds in time for each annual audited financial report: *Provided further*, That the Mayor shall submit to the Council of the District of Columbia by October 1, 1991, a reorganization plan for the Department of Finance and Revenue that shall follow the directives and initiatives contained in the Report of the Committee of the Whole on Bill 9-151, the Fiscal Year 1991 Supplemental Budget and Rescissions of Authority Request Act of 1991, at 8-20 (March 25, 1991).

ECONOMIC DEVELOPMENT AND REGULATION

Economic development and regulation, [$106,430,000] *$106,630,000: Provided*, That the District of Columbia Housing Finance Agency, established by section 201 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Code, sec. 45-2111), based upon its capability of repayments as determined each year by the Council of District of Columbia from the Finance Agency's annual audited financial statements to the Council of the District of Columbia, shall repay to the general fund an amount equal to the appropriated administrative costs plus interest at a rate of four percent per annum for a term of 15 years, with a deferral of payments for the first three years: *Provided further*, That notwithstanding the foregoing provision, the obligation to repay all or part of the amounts due shall be subject to the rights of the owners of any bonds or notes issued by the Finance Agency and shall be repaid to the District of Columbia government only from available operating revenues of the Finance Agency that are in excess of the amounts required for debt service, reserve funds, and operating expenses: *Provided further*, That upon commencement of the debt service payments, such payments shall be deposited into the general fund of the District of Columbia.

PUBLIC SAFETY AND JUSTICE

Public safety and justice, including purchase of 135 passenger-carrying vehicles for replacement only, including 130 for police-type use and five for fire-type use, without regard to the general purchase price limitation for the current fiscal year, [$930,836,000] *$931,785,000: Provided*, That the Metropolitan Police Department is authorized to replace not to exceed 25 passenger-carrying vehicles and the Fire Department of the District of Columbia is authorized to replace not to exceed five passenger-carrying vehicles annually whenever the cost of repair to any damaged vehicle exceeds three-fourths of the cost of the replacement: *Provided further*, That not to exceed $500,000 shall be available from this appropriation for the Chief of Police for the prevention and detection of crime: *Provided further*, That $50,000 of this appropriation shall be available at the discretion of the Chief of Police for community empowerment policing programs: *Provided further*, That not to exceed $25,000 of this appropriation shall be available solely for an accreditation study of the Metropolitan Police Department by a recognized law enforcement accrediting organization: *Provided further*, That the Metropolitan Police Department shall provide quarterly reports to the Committees on Appropriations of the House and Senate on efforts to increase efficiency and improve the professionalism in the department: *Provided further*, That notwithstanding any other provision of law, or Mayor's Order 86-45, issued March 18, 1986, the Metropolitan Police Department's delegated small purchase authority shall be $500,000: *Provided further*, That funds appropriated for expenses under the District of Columbia Criminal Justice Act, approved September 3, 1974 (88 Stat. 1090; Public Law 93-412; D.C. Code, sec. 11-2601 et seq.), for the fiscal year ending September 30, 1992, shall be available for obligations incurred under the Act in each fiscal year since inception in fiscal year 1975: *Provided further*, That funds appropriated for expenses under the District of Columbia Neglect Representation Equity Act of 1984, effective March 13, 1985 (D.C. Law 5-129; D.C. Code, sec. 16-2304), for the fiscal year ending September 30, 1992, shall be available for obligations incurred under the Act in each fiscal year since inception in fiscal year 1985: *Provided further*, That funds appropriated for expenses under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986, effective September 30, 1989 (D.C. Law 6-204; D.C. Code, sec. 21-2060), for the fiscal year ending September 30, 1992, shall be available for obligations incurred under the Act in each fiscal year since inception in fiscal year 1989: *Provided further*, That not to exceed $1,500 for the Chief Judge of the District of Columbia Court of Appeals, $1,500 for the Chief Judge of the Superior Court of the District of Columbia, and $1,500 for the Executive Officer of the District of Columbia Courts shall be available from this appropriation for official purposes: *Provided further*, That the District of Columbia shall operate and maintain a free, 24-hour telephone information service whereby residents of the area surrounding Lorton prison in Fairfax County, Virginia, can promptly obtain information from District of Columbia government officials on all disturbances at the prison, including escapes, fires, riots, and similar incidents: *Provided further*, That the District of Columbia government shall also take steps to publicize the availability of the 24-hour telephone information service among the residents of the area surrounding the Lorton prison: *Provided further*, That not to exceed $100,000 of this appropriation shall be used to reimburse Fairfax County, Virginia, and Prince William County, Virginia, for expenses incurred by the counties during the fiscal year ending September 30, 1992, in relation to the Lorton prison complex: *Provided*

further, That such reimbursements shall be paid in all instances in which the District requests the counties to provide police, fire, rescue, and related services to help deal with escapes, riots, and similar disturbances involving the prison: *Provided further*, That the staffing levels of each engine company within the Fire Department shall be maintained in accordance with the provisions of the Fire Department Rules and Regulations, if any: *Provided further*, That the reduction in the staffing levels of each two-piece engine company shall not take effect until such time as the Fire Chief certifies to the Committees on Appropriations of the House and Senate that the Department is taking all reasonable steps to reduce the expenses of the Department, including steps to reduce overtime, filling eligible vacancies, returning detailees to their intended positions, and other measures deemed appropriate by the Fire Department: *Provided further*, That when staffing levels are reduced, the pay and salary levels of fire fighter technicians shall be held harmless during the term of the collective bargaining agreement in effect on the date of enactment of this Act: *Provided further*, That none of the funds provided in this Act may be used to implement any staffing plan for the District of Columbia Fire Department that includes the elimination of any positions for Administrative Assistants to the Battalion Fire Chiefs of the Firefighting Division of the Department: *Provided further*, That the Mayor shall reimburse the District of Columbia National Guard for expenses incurred in connection with services that are performed in emergencies by the National Guard in a militia status and are requested by the Mayor, in amounts that shall be jointly determined and certified as due and payable for these services by the Mayor and the Commanding General of the District of Columbia National Guard: *Provided further*, That such sums as may be necessary for reimbursement to the District of Columbia National Guard under the preceding proviso shall be available from this appropriation, and the availability of the sums shall be deemed as constituting payment in advance for the emergency services involved.

PUBLIC EDUCATION SYSTEM

Public education system, including the development of national defense education programs, [$706,431,000] *$706,461,000*, to be allocated as follows: [$518,764,000] *$519,344,000* for the public schools of the District of Columbia; [$1,100,000] *$550,000* for pay-as-you-go capital projects for public schools, [of which $600,000 shall be for renovations to public school athletic and recreational grounds and facilities and $500,000 shall be for maintenance, improvements, and repairs to public school facilities under the Direct Activity Purchase System (DAPS): *Provided*, That the $500,000 provided for DAPS shall be returned to the United States Treasury on October 1, 1992, if the amount spent by the District of Columbia out of its own funds under DAPS and for maintenance, improvements, and repairs to public school facilities in fiscal year 1992 is less than the amount spent by the District out of its own funds for such purposes in fiscal year 1991]; $84,200,000 for the District of Columbia Teachers' Retirement Fund; $73,495,000 for the University of the District of Columbia; $20,578,000 for the Public Library, of which $200,000 is to be transferred to the Children's Museum; $3,527,000 for the Commission on the Arts and Humanities; $4,290,000 for the District of Columbia School of Law; and $477,000 for the Education Licensure Commission: *Provided*, That the public schools of the District of Columbia are authorized to accept not to exceed 31 motor vehicles for exclusive use in the driver education program: *Provided further*, That not to exceed $2,500 for the Superintendent of Schools, $2,500 for the President of the University of the District of Columbia, and $2,000 for the Public Librarian shall be available from this appropriation for expenditures for official purposes: *Provided further*, That this appropriation shall not be available to subsidize the education of nonresidents of the District of Columbia at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 1992, a tuition rate schedule that will establish the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area.

HUMAN SUPPORT SERVICES

Human support services, [$877,033,000] *$866,433,000*: *Provided*, That $20,848,000 of this appropriation, to remain available until expended, shall be available solely for District of Columbia employees' disability compensation: [*Provided further*, That $10,000,000 of this appropriation for the District of Columbia General Hospital shall not be available for obligation until September 30, 1992 and shall not be expended prior to October 1, 1992:] *Provided further*, That the District shall not provide free government services such as water, sewer, solid waste disposal or collection, utilities, maintenance, repairs, or similar services to any legally constituted private nonprofit organization (as defined in section 411(5) of Public Law 100-77, approved July 22, 1987) providing emergency shelter services in the District, if the District would not be qualified to receive reimbursement pursuant to the Stewart B. McKinney Homeless Act, approved July 22, 1987 (101 Stat. 485; Public Law 100-77; 42 U.S.C. 11301 et. seq).

PUBLIC WORKS

Public Works, including rental of one passenger-carrying vehicle for use by the Mayor and three passenger-carrying vehicles for use by the Council of the District of Columbia and purchase of passenger-carrying vehicles for replacement only, $234,390,000: *Provided*, That this appropriation shall not be available for collecting ashes or miscellaneous refuse from hotels and places of business.

WASHINGTON CONVENTION CENTER FUND

For the Washington Convention Center Fund, $13,110,000.

REPAYMENT OF LOANS AND INTEREST

For reimbursement to the United States of funds loaned in compliance with An Act to provide for the establishment of a modern, adequate, and efficient hospital center in the District of Columbia, approved August 7, 1946 (60 Stat. 896; Public Law 79-648); section 1 of An Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City, approved June 6, 1958 (72 Stat. 183; Public Law 85-451; D.C. Code, sec. 9-219); section 4 of An Act to authorize the Commissioners of the District of Columbia to plan, construct, operate, and maintain a sanitary sewer to connect the Dulles International Airport with the District of Columbia system, approved June 12, 1960 (74 Stat. 211; Public Law 86-515); section 723 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 821; Public Law 93-198; D.C. Code, sec. 47-321, note); and section 743(f) of the District of Columbia Self-Government and Governmental Reorganization Act Amendments, approved October 13, 1977 (91 Stat. 1156; Public Law 95-131; D.C. Code, sec. 9-219, note), including interest as required thereby, $277,577,000.

REPAYMENT OF GENERAL FUND DEFICIT

For the purpose of eliminating the $331,589,000 general fund accumulated deficit as of September 30, 1990, $41,170,000.

OPTICAL AND DENTAL BENEFITS

For optical and dental costs for nonunion employees, $3,423,000.

[PERSONAL SERVICES AND NONPERSONAL SERVICES ADJUSTMENT

[The Mayor shall reduce authorized appropriations and expenditures for personal services and related nonpersonal services in the amount of $1,000,000 within one or several of the various appropriation headings in this Act.]

TRAUMA CARE FUND

For the Trauma Care Fund, $10,000,000 to reimburse the actual cost of uncompensated care provided at Level I trauma centers in the District of Columbia: Provided, That this appropriation shall not be available for obligation until September 30, 1992 and shall not be expended prior to October 1, 1992: Provided further, That no trauma center may receive an amount greater than its proportionate share of the total available in the fund, in any fiscal year, as determined by its proportionate share of total uncompensated care among Level I trauma centers in the District of Columbia for the most recent year such data is available: Provided further, That in no case may any trauma center receive more than 35 percent of the total amount available in any one fiscal year.

CAPITAL OUTLAY

For construction projects, [$310,928,946] *$310,378,946*, as authorized by an Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes, approved April 22, 1904 (33 Stat. 244; Public Law 58-140; D.C. Code, secs. 43-1512 through 43-1519); the District of Columbia Public Works Act of 1954, approved May 18, 1954 (68 Stat. 101; Public Law 83-364); An Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City, approved June 6, 1958 (72 Stat. 183; Public Law 85-451; D.C. Code, secs. 9-219 and 47-3402); section 3(g) of the District of Columbia Motor Vehicle Parking Facility Act of 1942, approved August 20, 1958 (72 Stat. 686; Public Law 85-692; D.C. Code, sec. 40-805(7)); and the National Capital Transportation Act of 1969, approved December 9, 1969 (83 Stat. 320; Public Law 91-143; D.C. Code, secs. 1-2451, 1-2452, 1-2454, 1-2456, and 1-2457); including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: *Provided*, That $17,707,000 shall be available for project management and $10,273,000 for design by the Director of the Department of Public Works or by contract for architectural engineering services, as may be determined by the Mayor: *Provided further*, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management

System: *Provided further*, That, [$1,100,000] *$550,000* for the public school system for pay-as-you-go capital projects shall be financed from general fund operating revenues *: Provided further, That up to $1,500,000 of the funds provided under this heading may be used to secure access, rights of way, easements or title to lands not now in public ownership known as the Metropolitan Branch Trail from its current owners*: *Provided further*, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: *Provided further*, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1993, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1993: *Provided further*, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

WATER AND SEWER ENTERPRISE FUND

For the Water and Sewer Enterprise Fund, $219,752,000, of which $38,006,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.

For construction projects, $51,690,000, as authorized by an Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes, approved April 22, 1904 (33 Stat. 244; Public Law 58-140; D.C. Code, sec. 43-1512 et seq.): *Provided*, That the requirements and restrictions that are applicable to general fund capital improvement projects and set forth in this Act under the Capital Outlay appropriation title shall apply to projects approved under this appropriation title: *Provided further*, That $25,608,000 in water and sewer enterprise fund operating revenues shall be available for pay-as-you-go capital projects.

LOTTERY AND CHARITABLE GAMES ENTERPRISE FUND

For the Lottery and Charitable Games Enterprise Fund, established by the District of Columbia Appropriation Act for the fiscal year ending September 30, 1982, approved December 4, 1981 (95 Stat. 1174, 1175; Public Law 97-91), as amended, for the purpose of implementing the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Code, secs. 2-2501 et seq. and 22-1516 et seq.), $8,450,000, to be derived from non-Federal District of Columbia revenues: *Provided*, That the District of Columbia shall identify the sources of funding for this appropriation title from the District's own locally-generated revenues: *Provided further*, That no revenues from Federal sources shall be used to support the operations or activities of the Lottery and Charitable Games Control Board.

CABLE TELEVISION ENTERPRISE FUND

For the Cable Television Enterprise Fund, established by the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 5-36; D.C. Code, sec. 43-1801 et seq.), $2,000,000.

GENERAL PROVISIONS

SEC. [101] *201*. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. [102] *202*. Except as otherwise provided in this Act, all vouchers covering expenditures of appropriations contained in this Act shall be audited before payment by the designated certifying official and the vouchers as approved shall be paid by checks issued by the designated disbursing official.

SEC. 103. Whenever in this Act, an amount is specified within an appropriation for particular purposes or objects of expenditure, such amount, unless otherwise specified, shall be considered as the maximum amount that may be expended for said purpose or object rather than an amount set apart exclusively therefor.

SEC. 104. Appropriations in this Act shall be available, when authorized by the Mayor, for allowances for privately owned automobiles and motorcycles used for the performance of official duties at rates established by the Mayor: *Provided*, That such rates shall not exceed the maximum prevailing rates for such vehicles as prescribed in the Federal Property Management Regulations 101-7 (Federal Travel Regulations).

SEC. 105. Appropriations in this Act shall be available for expenses of travel and for the payment of dues of organizations concerned with the work of the District of Columbia government, when authorized by the Mayor: *Provided*, That the Council of the District of Columbia and the District of Columbia Courts may expend such funds without authorization by the Mayor.

SEC. 106. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of judgments that have been entered against the District of Columbia government: *Provided*, That nothing contained in this section shall be construed as modifying or affecting the provisions of section 11(c)(3) of title XII of the District of Columbia Income and Franchise Tax Act of 1947, approved March 31, 1956 (70 Stat. 78; Public Law 84-460; D.C. Code, sec. 47-1812.11(c)(3)).

SEC. 107. Appropriations in this Act shall be available for the payment of public assistance without reference to the requirement of section 544 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Code, sec. 3-205.44), and for the non-Federal share of funds necessary to qualify for Federal assistance under the Juvenile Delinquency Prevention and Control Act of 1968, approved July 31, 1968 (82 Stat. 462; Public Law 90-445; 42 U.S.C. 3801 et seq.).

SEC. 108. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 109. No funds appropriated in this Act for the District of Columbia government for the operation of educational institutions, the compensation of personnel, or for other educational purposes may be used to permit, encourage, facilitate, or further partisan political activities. Nothing herein is intended to prohibit the availability of school buildings for the use of any community or partisan political group during non-school hours.

SEC. 110. The annual budget for the District of Columbia government for the fiscal year ending September 30, 1993, shall be transmitted to the Congress no later than April 15, 1992.

SEC. 111. None of the funds appropriated in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name, title, grade, salary, past work experience, and salary history are not available for inspection by the House and Senate Committees on Appropriations, the House Committee on the District of Columbia, the Subcommittee on General Services, Federalism, and the District of Columbia of the Senate Committee on Governmental Affairs, and the Council of the District of Columbia, or their duly authorized representative: *Provided*, That none of the funds contained in this Act shall be made available to pay the salary of any employee of the District of Columbia government whose name and salary are not available for public inspection.

SEC. 112. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making payments authorized by the District of Columbia Revenue Recovery Act of 1977, effective September 23, 1977 (D.C. Law 2-20; D.C. Code, sec. 47-421 et seq.).

SEC. 113. No part of this appropriation shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

SEC. 114. None of the Federal funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

SEC. 115. At the start of the fiscal year, the Mayor shall develop an annual plan, by quarter and by project, for capital outlay borrowings: *Provided*, That within a reasonable time after the close of each quarter, the Mayor shall report to the Council of the District of Columbia and the Congress the actual borrowing and spending progress compared with projections.

SEC. 116. The Mayor shall not borrow any funds for capital projects unless the Mayor has obtained prior approval from the Council of the District of Columbia, by resolution, identifying the projects and amounts to be financed with such borrowings.

SEC. 117. The Mayor shall not expend any moneys borrowed for capital projects for the operating expenses of the District of Columbia government.

SEC. 118. None of the funds appropriated by this Act may be obligated or expended by reprogramming except pursuant to advance approval of the reprogramming granted according to the procedure set forth in the Joint Explanatory Statement of the Committee of Conference (House Report No. 96-443), which accompanied the District of Columbia Appropriation Act, 1980, approved October 30, 1979 (93 Stat. 713; Public Law 96-93), as modified in House Report No. 98-265, and in accordance with the Reprogramming Policy Act of 1980, effective September 16, 1980 (D.C. Law 3-100; D.C. Code, sec.. 47-361 et seq.).

SEC. 119. None of the Federal funds provided in this Act shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of the District of Columbia.

SEC. 120. None of the Federal funds provided in this Act shall be obligated or expended to procure passenger automobiles as defined in the Automobile Fuel Efficiency Act of 1980, approved October 10, 1980 (94

Stat. 1824; Public Law 96-425; 15 U.S.C. 2001(2)), with an Environmental Protection Agency estimated miles per gallon average of less than 22 miles per gallon: *Provided*, That this section shall not apply to security, emergency rescue, or armored vehicles.

SEC. 121. (a) Notwithstanding section 422(7) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 790; Public Law 93-198; D.C. Code, sec. 1-242(7)), the City Administrator shall be paid, during any fiscal year, a salary at a rate established by the Mayor, not to exceed the rate established for level IV of the Executive Schedule under 5 U.S.C. 5315.

(b) For purposes of applying any provision of law limiting the availability of funds for payment of salary or pay in any fiscal year, the highest rate of pay established by the Mayor under subsection (a) of this section for any position for any period during the last quarter of calendar year 1991 shall be deemed to be the rate of pay payable for that position for September 30, 1991.

(c) Notwithstanding section 4(a) of the District of Columbia Redevelopment Act of 1945, approved August 2, 1946 (60 Stat. 793; Public Law 79-592; D.C. Code, sec. 5-803(a)), the Board of Directors of the District of Columbia Redevelopment Land Agency shall be paid, during any fiscal year, a per diem compensation at a rate established by the Mayor.

SEC. 122. Notwithstanding any other provisions of law, the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code, sec. 1-601.1 et seq.), enacted pursuant to section 422(3) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 790; Public Law 93-198; D.C. Code, sec. 1-242(3)), shall apply with respect to the compensation of District of Columbia employees: *Provided*, That for pay purposes, employees of the District of Columbia government shall not be subject to the provisions of title 5 of the United States Code.

SEC. 123. The Director of the Department of Administrative Services may pay rentals and repair, alter, and improve rented premises, without regard to the provisions of section 322 of the Economy Act of 1932 (Public Law 72-212; 40 U.S.C. 278a), upon a determination by the Director, that by reason of circumstances set forth in such determination, the payment of these rents and the execution of this work, without reference to the limitations of section 322, is advantageous to the District in terms of economy, efficiency, and the District's best interest.

SEC. 124. No later than 30 days after the end of the first quarter of the fiscal year ending September 30, 1992, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia the new fiscal year 1992 revenue estimates as of the end of the first quarter of fiscal year 1992. These estimates shall be used in the budget request for the fiscal year ending September 30, 1993. The officially revised estimates at midyear shall be used for the midyear report.

SEC. 125. Section 466(b) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 806; Public Law 93-198; D.C. Code, sec. 47-326), as amended, is amended by striking "sold before October 1, 1991" and inserting "sold before October 1, 1992".

SEC. 126. No sole source contract with the District of Columbia government or any agency thereof may be renewed or extended without opening that contract to the competitive bidding process as set forth in section 303 of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Code, sec. 1-1183.3), except that the District of Columbia Public Schools may renew or extend sole source contracts for which competition is not feasible or practical, provided that the determination as to whether to invoke the competitive bidding process has been made in accordance with duly promulgated Board of Education rules and procedures.

SEC. 127. For purposes of the Balanced Budget and Emergency Deficit Control Act of 1985, approved December 12, 1985 (99 Stat. 1037; Public Law 99-177), as amended, the term "program, project, and activity" shall be synonymous with and refer specifically to each account appropriating Federal funds in this Act, and any sequestration order shall be applied to each of the accounts rather than to the aggregate total of those accounts: *Provided*, That sequestration orders shall not be applied to any account that is specifically exempted from sequestration by the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1037; Public Law 99-177), as amended.

SEC. 128. In the event a sequestration order is issued pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1037; Public Law 99-177), as amended, after the amounts appropriated to the District of Columbia for the fiscal year involved have been paid to the District of Columbia, the Mayor of the District of Columbia shall pay to the Secretary of the Treasury, within 15 days after receipt of a request therefor from the Secretary of the Treasury, such amounts as are sequestered by the order: *Provided*, That the sequestration percentage specified in the order shall be applied proportionately to each of the Federal appropriation accounts in this Act that are not specifically exempted from sequestration by the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1037; Public Law 99-177), as amended.

SEC. 129. Sec. 133(e) of the District of Columbia Appropriations Act, 1990, as amended, is amended by striking "December 31, 1991" and inserting "December 31, 1992".

SEC. 130. Such sums as may be necessary for fiscal year 1992 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

SEC. 131. For the fiscal year ending September 30, 1992, the District of Columbia shall pay interest on its quarterly payments to the United States that are made more than 60 days from the date of receipt of an itemized statement from the Federal Bureau of Prisons of amounts due for housing District of Columbia convicts in Federal penitentiaries for the preceding quarter.

SEC. 132. None of the funds provided in this Act may be used by the District of Columbia to provide for the salaries, expenses, or other costs associated with the offices of United States Senator or United States Representative under section 4(d) of the District of Columbia Statehood Constitutional Convention Initiative of 1979, effective March 10, 1981 (D.C. Law 3-171; D.C. Code, sec. 1-113(d)).

SEC. 133. (a) Up to 75 officers or members of the Metropolitan Police Department who were hired before February 14, 1980, and who retire on disability before the end of calendar year 1991 shall be excluded from the computation of the rate of disability retirement under subsection 145(a) of the District of Columbia Retirement Reform Act, as amended, approved September 30, 1983 (97 Stat. 727; D.C. Code, sec. 1-725(a)), for purposes of reducing the authorized Federal payment to the District of Columbia Police Officers and Fire Fighters' Retirement Fund pursuant to subsection 145(c) of the District of Columbia Retirement Reform Act.

(b) The Mayor, within 30 days after the enactment of this Act, shall engage an enrolled actuary, to be paid by the District of Columbia Retirement Board, and shall comply with the requirements of sections 142(d) and 144(d) of the District of Columbia Retirement Reform Act of 1979, approved November 17, 1979 (93 Stat. 866; Public Law 96-122; D.C. Code, secs. 1-722(d) and 1-724(d)).

(c) If any of the 75 light duty positions that may become vacant under subsection (a) of this section are filled, a civilian employee shall be hired to fill that position or it shall be filled by an officer or member of the Metropolitan Police Department for a temporary period of time.

(d) The limited duty policy of the Metropolitan Police Department shall be that in effect prior to July 8, 1990[, unless ordered by the relevant court]: *Provided, That nothing herein is intended to prohibit the parties from negotiating a limited duty policy that is fair for all concerned and that does not impede the Department from carrying out its duties: Provided further, That whatever negotiations take place should also consider methods to prevent abuses of the program which drains scarce police resources.*

SEC. 134. (a) An entity of the District of Columbia government may accept and use a gift or donation during fiscal year 1992 if—

(1) the Mayor approves the acceptance and use of the gift or donation; and

(2) the entity uses the gift or donation to carry out its authorized functions or duties.

(b) Each entity of the District of Columbia government shall keep accurate and detailed records of the acceptance and use of any gift or donation under subsection (a), and shall make such records available for audit and public inspection.

(c) For purposes of this section, the term "entity of the District of Columbia government" includes an independent agency of the District of Columbia.

[SEC. 135. (a) The Mayor shall ensure that the requirements of the Buy American Act apply to all procurements made with any funds provided under this Act.

[(b)(1) If the Mayor, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the United States Trade Representative shall rescind the waiver of the Buy American Act with respect to the procurement of such types of products produced in that foreign country with funds provided under this Act.

[(2) An agreement referred to in paragraph (1) is any agreement between the United States and a foreign country pursuant to which the head of an agency of the United States Government has waived the requirements of the Buy American Act with respect to certain products produced in the foreign country.

[(c) The Mayor shall submit to Congress a report on the amount of procurements from foreign entities made in fiscal years 1992 and 1993 with funds provided under this Act. Such report shall separately indicate the dollar value of items procured with such funds for which the Buy American Act was waived

pursuant to any agreement described in subsection (b)(2), the Trade Agreements Act of 1979, or any international agreement to which the United States is a party.

[(d) No contract or subcontract made with funds provided under this Act may be awarded for the procurement of an article, material, or supply produced or manufactured in a foreign country whose government unfairly maintains in government procurement a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses, as identified by the President pursuant to section 305(g)(1)(A) of the Trade Agreements Act of 1979.

[(e) If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, that person shall be ineligible to receive any contract or subcontract made with funds provided under this Act, pursuant to the debarment, suspension, and ineligibility procedures described in section 9.400 through 9.409 of title 48, Code of Federal Regulations.

[(f) For purposes of this section, the term "Buy American Act" means title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933 (41 U.S.C. 10a et seq.).

[SEC. 136. None of the funds provided in this Act may be used for the renovation of the property located at 227 7th Street Southeast (commonly known as Eastern Market), except that funds provided in this Act may be used for the regular maintenance and upkeep of the current structure and grounds located at such property.]

SEC. 135. (a) Notwithstanding any other law, including the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 774; D.C. Code, sec. 1-201 passim), the Mayor, subject to subsection (b) of this section, may reduce the spending authorization for any independent agency of the District of Columbia government, except the Council of the District of Columbia and the District of Columbia courts, whenever the Mayor determines that the reduction is necessary to keep the budget for the District of Columbia government in balance.

(b) The Mayor shall submit any proposed spending reduction under subsection (a) of this section to the Council for approval. The Council shall consider the proposed reduction according to its rules. If no Member of the Council files an objection to the proposed reduction within 10 calendar days, excluding days of Council recess, after the receipt of a proposed reduction from the Mayor, the reduction shall be deemed to be approved. If an objection is filed during the initial 10 calendar day period, the Council may approve or disapprove the proposed reduction by resolution within 45 calendar days, excluding days of Council recess, after the initial receipt of the reduction from the Mayor, or the reduction shall be deemed to be approved.

SEC. 136. Notwithstanding the limitations on the types of indebtedness set forth in the first sentence of section 461(a) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 804; Public Law 93-198; D.C. Code, sec. 47-321(a)), the District may incur indebtedness pursuant to section 461(a) to finance its outstanding accumulated deficit as of September 30, 1990, by issuing general obligation bonds: Provided, That the authority to incur such indebtedness shall expire on September 30, 1992. Notwithstanding section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 813; Public Law 93-198; D.C. Code, sec. 1-233(c)(2)), any act of the Council authorizing the issuance of general obligation bonds under this section may take effect on the date of enactment of such act.

This title may be cited as the "District of Columbia Appropriations Act, 1992".

TITLE II

FISCAL YEAR 1991 SUPPLEMENTAL

DISTRICT OF COLUMBIA FUNDS

GOVERNMENTAL DIRECTION AND SUPPORT

(INCLUDING RESCISSION)

For an additional amount for "Governmental direction and support", $257,000: *Provided*, That of the funds appropriated under this heading for the fiscal year ending September 30, 1991 in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2226 to 2227), $5,650,000 are rescinded for a net decrease of $5,393,000: *Provided further*, That of the $9,077,000 appropriated under this heading for fiscal year 1991 in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2226), to pay legal, management, investment, and other fees and administrative expenses of the District of Columbia Retirement Board, none shall be derived from the general fund and not to exceed $9,077,000 shall be derived from the earnings of the applicable retirement funds: *Provided further*, That within fifteen days of the date of enactment of this Act the District of Columbia Retirement Board shall reimburse the general fund of the District by an amount not to exceed $818,000 for any expenses of the Board paid with general fund revenues in fiscal year 1991: *Provided further*, That the Mayor shall submit to the Council of the District of Columbia by October 1, 1991, a reorganization plan for the Department of Finance and Revenue that shall follow the directives and initiatives contained in the Report of the Committee of the Whole on Bill 9-151, the Fiscal Year 1991 Supplemental Budget and Rescissions of Authority Request Act of 1991, at 8-20 (March 25, 1991).

ECONOMIC DEVELOPMENT AND REGULATION

(INCLUDING RESCISSION)

For an additional amount for "Economic development and regulation", $37,000: *Provided*, That of the funds appropriated under this heading for the fiscal year ending September 30, 1991 in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2227), $29,525,000 are rescinded for a net decrease of $29,488,000.

PUBLIC SAFETY AND JUSTICE

(INCLUDING RESCISSION)

For an additional amount for "Public safety and justice", $10,774,000, of which an additional $3,600,000 shall be allocated to the Fire and Emergency Medical Services Department; an additional $84,000 shall be allocated to the Civilian Complaint Review Board; and notwithstanding any other law, an additional $7,090,000 shall be allocated for the District of Columbia Police Officers and Fire Fighters' Retirement Fund: *Provided*, That of the funds appropriated under this heading for the fiscal year ending September 30, 1991 in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2227 to 2229), $20,711,000 are rescinded for a net decrease of $9,937,000: *Provided further*, That notwithstanding any other provisions of law, of the funds available for fiscal year 1991, $225,000 of the amount allocated to the District of Columbia Judge's Retirement Fund are rescinded.

The following provision under this heading for the fiscal year ending September 30, 1991 in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2228), is repealed: "*Provided further*, That at least 21 ambulances shall be maintained on duty 24 hours per day, 365 days a year:".

PUBLIC EDUCATION SYSTEM

(INCLUDING RESCISSION)

For an additional amount for "Public education system", $200,000 for the Public Library to be transferred to the Children's Museum.

Of the funds appropriated under this heading for the fiscal year ending September 30, 1991 in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2229), $11,123,000 for the D.C. Public Schools; $10,000,000 for pay-as-you-go capital projects for public schools; $3,418,000 for the University of the District of Columbia; $41,000 for the Education Licensure Commission; $327,000 for the Commission on Arts and Humanities; and notwithstanding any other provisions of law, $23,650,000 for the District of Columbia Teachers' Retirement Fund are rescinded for a net decrease of $48,359,000.

The following provision under this heading for the fiscal year ending September 30, 1991 in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2229), is repealed: "*Provided further*, That the amount allocated under this title for the public schools shall be increased, dollar for dollar up to $36,400,000, by the amount the annual Federal payment for fiscal year 1991 is increased above the current $430,500,000 Federal payment in fiscal year 1990:".

HUMAN SUPPORT SERVICES

(RESCISSION)

Of the funds appropriated under this heading for the fiscal year ending September 30, 1991 in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2229 to 2230), $11,227,000 are rescinded.

PUBLIC WORKS

(INCLUDING RESCISSION)

For an additional amount for "Public works", $2,965,000: *Provided*, That of the funds appropriated under this heading for the fiscal year ending September 30, 1991 in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2230), $2,949,000 are rescinded for a net increase of $16,000.

WASHINGTON CONVENTION CENTER FUND

For an additional amount for "Washington Convention Center Fund", $2,756,000.

REPAYMENT OF LOANS AND INTEREST

For an additional amount for "Repayment of loans and interest", $8,577,000.

REPAYMENT OF GENERAL FUND DEFICIT

The paragraph under the heading "Repayment of General Fund Deficit", in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2231), is repealed.

SHORT-TERM BORROWINGS

For an additional amount for "Short-term borrowings", $8,142,000.

OPTICAL AND DENTAL BENEFITS

For an additional amount for "Optical and dental benefits", $311,000.

SUPPLY, ENERGY, AND EQUIPMENT ADJUSTMENT

The paragraph under the heading "Supply, energy, and equipment adjustment", in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2231), is repealed.

PERSONAL SERVICES ADJUSTMENT

The paragraph under the heading "Personal services adjustment", in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518, 104 Stat. 2231), is repealed.

CAPITAL OUTLAY

For an additional amount for "Capital outlay", $73,570,000, to remain available until expended: *Provided*, That of the amounts appropriated under this heading in prior fiscal years for the Mount Vernon Square Campus project of the University of the District of Columbia, $39,134,000 are rescinded for a net increase of $34,436,000: *Provided further*, That $2,644,000 shall be available for project management and $3,212,000 for design by the Director of the Department of Public Works or by contract for architectural engineering services, as may be determined by the Mayor.

WATER AND SEWER ENTERPRISE FUND

(INCLUDING RESCISSION)

For an additional amount for "Water and Sewer Enterprise Fund", $23,633,000: *Provided*, That of the funds appropriated under this heading for the fiscal year ending September 30, 1991 in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2232), $35,880,000 are rescinded for a net decrease of $12,247,000: *Provided further*, That $35,852,000 of the amounts available for fiscal year 1991 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects instead of $36,608,000 as provided under this heading in the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2232): *Provided further*, That $15,477,000 in water and sewer enterprise fund operating revenues shall be available for pay-as-you-go capital projects instead of $39,609,000 as provided under this heading in the District of Columbia Appropriations Act, 1991, approved November 5 1990 (Public Law 101-518; 104 Stat. 2232).

GENERAL PROVISIONS

SEC. [101.] *201.* Section 112 of the District of Columbia Appropriations Act, 1991, approved November 5, 1990 (Public Law 101-518; 104 Stat. 2234), is amended by striking "April 15, 1991" and inserting "May 17, 1991".

SEC. [102.] *202.* (a) An entity of the District of Columbia government may accept and use a gift or donation during fiscal year 1991 if—

(1) the Mayor approves the acceptance and use of the gift or donation; and

(2) the entity uses the gift or donation to carry out its authorized functions or duties.

(b) Each entity of the District of Columbia government shall keep accurate and detailed records of the acceptance and use of any gift or donation under subsection (a), and shall make such records available for audit and public inspection.

(c) For purposes of this section, the term "entity of the District of Columbia government" includes an independent agency of the District of Columbia.

SEC. 203. (a) Notwithstanding any other law, including the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 774; D.C. Code, sec. 1-201 passim), the Mayor, subject to subsection (b) of this section, may reduce the spending authorization for any independent agency of the District of Columbia government, except the Council of the District of Columbia and the District of Columbia courts, whenever the Mayor determines that the reduction is necessary to keep the budget for the District of Columbia government in balance.

(b) The Mayor shall submit any proposed spending reduction under subsection (a) of this section to the Council for approval. The Council shall consider the proposed reduction according to its rules. If no Member of the Council files an objection to the proposed reduction within 10 calendar days, excluding days of Council recess, after the receipt of a proposed reduction from the Mayor, the reduction shall be deemed to be approved. If an objection is filed during the initial 10 calendar day period, the Council may approve or disapprove the proposed reduction by resolution within 45 calendar days, excluding days of Council recess, after the initial receipt of the reduction from the Mayor, or the reduction shall be deemed to be approved.

SEC. 204. Notwithstanding the limitations on the types of indebtedness set forth in the first sentence of section 461(a) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 804; Public Law 93-198; D.C. Code, sec. 47-321(a)), the District may incur indebtedness pursuant to Section 461(a) to finance its outstanding accumulated deficit as of September 30, 1990, by issuing general obligation bonds: Provided, That the authority to incur such indebtedness shall expire on September 30, 1992. Notwithstanding section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 813; Public Law 93-198; D.C. Code, sec. 1-233(c)(2)), any act of the Council authorizing the issuance of general obligation bonds under this section may take effect on the date of enactment of such act.

This title may be cited as the "District of Columbia Supplemental Appropriations and Rescissions Act, 1991".

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. ADAMS. Mr. President, I am pleased to present the District of Columbia appropriations bill for fiscal year 1992 to the Senate today.

Mr. DOLE. Mr. President, if the Senator will yield, I indicate the manager on this side is on the way. He has no objection to proceeding.

I am pleased to note the Senator's presence here this evening and everything is being covered.

Mr. ADAMS. I am pleased to note the minority leader's statement and we will be most pleased to proceed.

The committee is recommending a Federal payment of $630,500,000, which is the same as the bill as passed by the House, the pending authorization, and the amount requested by the city. The authorization bill has passed the House and is pending before the Senate Governmental Affairs Committee.

That bill represents the first increase in the authorized level of the Federal payment in over 5 years. It is intended to make the level of the Federal payment more predictable and it is intended that we assist this new mayor in every way possible to be successful. It is intended to make the Federal payment not only more predictable but something that we can deal with in future years.

The committee's recommendation represents the recognition that the Federal Government has not, in recent years, lived up to its obligation to the local government. This amount is not a handout, it is not a bailout, it is not a gift, it is a payment in lieu of taxes representing nothing more than the Federal Government paying its taxes to the local government.

Mr. President, at the time that limited home rule was established for the city the Congress restricted the city's ability to levy taxes. For instance, the Federal Government does not pay property tax on 42 percent of the property that it owns in the city. Nor can the District collect sales tax on purchases made by the Federal Government in the city. It is estimated that fully two-thirds of the local economy is beyond the city's taxing authority.

If we are to expect that the city will maintain its physical infrastructure and provide quality services we must also be ready to pay our fair share. If we are to restrict the city's ability to tax the local economy, or want to limit the Federal payment, we must recognize the effect of that on the city's treasury.

Mr. President, those are some of the reasons why there needs to be a more stable and reliable way to determine the Federal payment and to set it on a predictable formula. This does not create an entitlement, but it does give the District a method which provides more stability in predicting the Federal payment from year to year.

In addition to the Federal payment, the committee is recommending the annual payment to the retirement funds of the District of Columbia of $52,070,000. We have also included $17,280,000 in Federal funds for various programs and projects, which I will highlight.

Mr. President, our recommendation includes, $500,000 to continue the breast and cervical cancer screening program for poor women. This program is designed to reach women who have no private insurance and do not qualify for Medicare. It is a preventive program. When fully implemented and sustained over the years it will reduce the need for other more expensive treatments should these women contract this terrible disease. A key component of this program is the outreach that must be done to locate these women and to inform them of the availability of this service.

We have also included $3 million in fiscal year 1992 and $6 million in fiscal year 1993 as continued support for the National Child Protection, Trauma, and Research Center at Children's Hos-

pital. We have supported this project for the past 2 years because of the growing problem of child abuse and neglect cases in the District of Columbia. Much of this phenomenon is drug related. City agencies are being strained by the increasing caseload, which has grown by 106 percent in recent years. This center will provide one more resource that local government agencies can call on for innovative, professional help.

Mr. President, the bill also contains an additional $900,000 for D.C. General; $400,000 is for physicals and immunizations for school age children. Even though the law requires it, teachers in the District report that as many as one-third of children come to school without proper immunizations. These funds will expand on a program begun by the D.C. Board of Education and D.C. General last year to make sure that these kids, and their classmates, are protected from childhood diseases.

The sum of $500,000 is for pediatric HIV services. The hospital has identified a growing prevalence of HIV in newborns and young children. These funds will support the establishing of outpatient treatment and counseling for HIV children and their mothers.

The final recommendation in the area of health care concerns the establishment of a trauma care fund. We have provided $10 million which will be used as the initial capitalization of this fund. This is a small amount of money when compared to the over $176 million in uncompensated trauma care provided by the city's six level I trauma centers in 1989. This fund will not solve the problem of uncompensated care in the District of Columbia, but it is a start. The committee encourages the District government and others in the community to explore innovative ways to address this issue. One such possible additional source of revenues for the fund is the asset forfeiture fund. These moneys are derived from the arrest and prosecution of drug dealers. Since many of the trauma cases result from street violence, this account seems to be a logical source of additional funds.

Mr. President, in addition to these recommendations we are recommending concurring with the House allowance of $50,000 for the Metropolitan Police Department to assist community patrol activities, and the $25,000 included for an accreditation study of the department.

For the D.C. public schools the House included $600,000 for renovation of athletic and recreational facilities, and $500,000 extra for other maintenance improvements and repairs. We are recommending a total of $550,000 to be applied to the highest priority projects.

We have also included $330,000 in the school's budget to operate the Options Program of the National Learning Center during next school year and through the summer. This program is an intensive dropout prevention program for seventh graders. A recent report on this program shows that in one semester the kids increased their reading level by more than one grade level, and increased their math scores by 1.6 grade levels.

Mr. President, also included is $250,000 for a parents as teachers program that has been of great interest to Senator BOND. This program improves early childhood education by involving the parents at the very start of a child's education. I know the Senator from Missouri will have more to say on this program later.

Mr. President, the bill contains $799,000 to keep Engine Company No. 3 open during fiscal year 1992. The budget had proposed closing this station house, taking with it the ambulance station there. We are aware of the Mayor's plans to improve the ambulance service, and certainly support any effort to improve that vital service. I am concerned about removing the nearest ambulance to Union Station, the Capitol and the many hotels in the area with all the visitors that pass through that area daily. Keeping the station house open will allow it to be considered as part of the system while the ambulance service is being reviewed.

We have also included $200,000 for architectural and design work on improvements to the municipal fish wharf, which will be made following the completion of a comprehensive plan for the southwest waterfront. This unique marketplace generates substantial tax revenue for the District and requires improvements to improve access and safety for its patrons.

Mr. President, the committee is also recommending $250,000 to begin planning and design work on the modernization of George Washington University Medical Center. This project was authorized last year in Public Law 101-590. The university is required to match each dollar provided by the Federal Government on a one for one basis. The medical center is an important element in the city's health care system. Each year over 3,000 victims of violence find their way into the hospital's emergency room. In addition its medical staff coordinate training for the District's emergency medical personnel and provides medical services for the city's homeless shelters. In addition to this amount the bill includes advance appropriations to complete the project by 1995.

Finally there are four language items on which we have included recommendations. First, there are two House floor amendments that we have recommended be stricken.

Mr. President, the first one requires that the District comply with Federal buy America laws. The committee is recommending striking section 135 of the House bill, a so-called buy America provision, only after assuring itself that it is redundant. The buy America provisions of title 41 of the United States Code already apply specifically to the District. The only thing this amendment added were certification requirements on the District's already cumbersome procurement practices.

The second amendment provided that no funds could be spent for renovations to Eastern Market. I have received a letter from Councilmember Harold Brazil who represents the area where the market is located. He states that the "renovation of the market is purely a local matter" and urges that the language be deleted. The committee agrees with Mr. Brazil and we are recommending that the Senate strike the floor amendment included in the House.

Finally, there are two items that the city has requested that the House did not include. One, is language that would allow the city to issue $332 million in bonds to retire the accumulated deficit. This will allow the city to improve its bond rating by eliminating the need to issue yearly short-term notes to satisfy its cash needs. These bonds will be paid off in 12 years and permit the city to establish a fund reserve, or rainy day fund, like many other cities and States have done to handle short-term fiscal problems.

The second provision would grant to the mayor authority to order reductions in the budgets of independent agencies of the District of Columbia. This authority is necessary to ensure that the mayor has the power needed to maintain a balanced budget during fiscal years 1991 and 1992. This language is necessitated by a recent court decision calling into question the mayor's authority.

(Mr. DECONCINI assumed the chair.)

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

Mr. ADAMS. I am happy to yield to the chairman of the Appropriations Committee.

Mr. BYRD. Mr. President, I want to express my gratitude to the distinguished Senator and to the ranking member for their excellent work on this measure. Their work was greatly assisted by the cooperation of their colleagues on the subcommittee and on the full Committee on Appropriations, and I also compliment the majority and minority staff for their months of hard work in connection with this bill; Richard Pierce, Tim Leeth, Lula Joyce, and Dona Pate.

I also am pleased to state that the bill, as recommended, is $28,285,000 above fiscal 1991 appropriations. With respect to the subcommittee's 602 allocation, the bill as recommended is within both the budget authority and outlay ceilings.

I express the gratitude of the Senate to the Senators who have worked on this bill so long. It is a labor of love,

but somebody has to do this. A Senator does not get any kudos back in his State for the work he does on this bill, but this is the Federal city, not a Federal city. The Constitution refers to the Federal city.

And we only have one, the Federal city, Washington, DC. I was chairman of that Subcommittee on the District of Columbia appropriations for 7 years. The Senator from the State of Washington and his colleague from the State of Missouri are contributing a service to the Senate, to the city—the Federal city—and to the country. It takes many, many hours of painstaking work on the part of Senators who are on that subcommittee and on the part of the staff. Their work does not go unnoticed.

I also want to say that I have been pleased to see the work that the new Mayor of the District of Columbia is doing. She is instilling discipline and reality in the D.C. government. She is trying to clean up a mess, and that is pretty hard to do. But she is doing her best. As long as she puts the kind of effort into it that she is putting—she is taking some tough stands on some tough measures. She has opposition but she stands firm. Those are hard decisions she has to make. She inherited many problems.

I am encouraged when I see the kind of steadfastness that she is demonstrating. I will not get any votes back in West Virginia or votes against me for saying this. I just feel that somebody should stand up and encourage this lady who is taking on a tough job. And she is showing that she has the nerve, the stamina, and the courage to do it.

So I am for the increase in Federal payment. And I congratulate the Senator again because I know the kind of hours that he has had to put into this, and in doing so he has to take those hours away from the people who sent him here.

But it has to be done. Somebody has to do it. And the Senator has done well.

Mr. ADAMS. I thank the President pro tempore.

Mr. President, in closing, I want to note the support and the guidance that the distinguished chairman of the Appropriations Committee, ROBERT C. BYRD, my good friend and the Senator from West Virginia, has provided. He formerly chaired this subcommittee, as he stated, and his knowledge and understanding of the District have been indispensable during this entire process. They really have, and I appreciate it.

And I also want to note the contributions of the other members of the subcommittee. Senators FOWLER and KERREY on our side have made valuable contributions to our consideration of this bill. And on the other side, my junior colleague from the State of Washington, Senator GORTON, has spent time reviewing the District's budget, and our distinguished ranking member, the Senator from Missouri [Mr. BOND]—and I am pleased to see him on the floor—has made several very useful suggestions which have been incorporated in this bill, and this is a better bill because of it.

Mr. President, before yielding to Senator BOND, I have the usual unanimous-consent request concerning committee amendments and then I will yield to Senator BOND.

Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc and the bill as thus amended be regarded for purposes of amendment as original text, provided that no points of order shall have been considered to have been waived if the request is agreed to.

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

Mr. ADAMS. Mr. President, at this point, I yield the floor so that we may hear from my distinguished colleague who is the ranking member of the District of Columbia Subcommittee, Senator BOND.

Mr. BOND. Mr. President, I thank the chairman of the District of Columbia Appropriations Subcommittee, my good friend from Washington. I also join with him in expressing our thanks both to the chairman of the full committee and the ranking member, the Senator from Oregon.

I express my special appreciation to Chairman ADAMS for bringing to the Senate a fair and equitable bill which I believe all of colleagues should be able to support. I should note that the budget authority and the outlays associated with the bill are within the subcommittee's 602 allocation.

Mr. President, as we are all aware, the District of Columbia has new leadership. Mayor Sharon Pratt Dixon has given every indication that she can and will bring stability to the District's finances. She has been joined in this effort by the chairman of the council, Mr. John Wilson. Together, they have confronted the fiscal problem and worked toward a solution—both in the short-term and the long-term.

It must be noted, as well, that the Congress and this administration has been supportive of Mayor Dixon's leadership. The bill before us continues that support. The supplemental appropriations bill passed earlier this year provided an additional $100 million for the Federal payment to the District. And the bill before us provides $630.5 million for the Federal payment—the first increase since fiscal year 1987. Mr. President, the Federal payment is a unique funding source provided to the District of Columbia to make up for the revenues lost to the city by virtue of the huge amount of untaxable land and assets owned by the Federal Government as well as embassies and so forth. In addition, the District must provide unique services to the Federal Government that are not directly reimbursed. I believe that the amount recommended in this bill is fair.

Mr. President, the chairman of the subcommittee has highlighted the bill in his opening remarks. I will not take the time of the Senate to repeat these facts and figures, but I do want to mention a couple of items of special interest: Parents as Teachers; $10 million trauma care fund to be used by various D.C. hospitals which have been dramatically impacted by the number of patients who cannot pay—from those who are truly in need to those who come in from violence.

I believe, based on my conversation with the Mayor, that she shares my view that the city's emergency rooms cannot be used as the city's primary care centers. We have asked the city to develop a proposal for handling non-emergency care away from the emergency rooms. Not only will this save money, but it provides a continuity in basic health care.

In addition, we are recommending language which allows the Mayor to use confiscated drug funds to help pay for the health care of the convicted individuals.

Mr. President, the Federal payment this year is a substantial increase over last year's request. I have spoken earlier about the Federal payment level, and I should mention that it appears that during this session of Congress that a formula for this payment will be acted upon. The House has already passed such legislation, and I believe it is a step in the right direction to allow stability in the District's budget process.

I must note that the bill before us also recommends a few small items to be funded with Federal dollars—again, all within our allocations. While the committee unanimously supported these items, I believe that we must be aware that future allocations to the District of Columbia for discretionary Federal dollars will be carefully reviewed. With the increase in the Federal payment and the improving budgetary situation of the District, I believe it will be the District's responsibility to handle these programs. I am not being negative about any of these matters, but I think we—and the District of Columbia government—must face the reality of ever-declining discretionary dollars.

Mr. President, in conclusion, I again want to commend the chairman of the subcommittee for his cooperation in bringing this bill before the Senate. I further want to thank the chairman of the full committee, Senator BYRD; and the ranking member, Senator HATFIELD for their support of the District of Columbia bill. Without their understanding and support of the unique problems facing the city, the increase

in the Federal payment could not have happened.

Mr. President, I urge my colleagues to support the bill as recommended by the committee.

Mr. SASSER. Mr. President, the Senate Budget Committee has examined H.R. 2699, the District of Columbia appropriations bill, and has found that the bill is under its 602(b) budget authority allocation by $150,000 and at its 602(b) outlay allocation.

I compliment the distinguished manager of the bill, Senator ADAMS, and the distinguished ranking member of the District of Columbia Subcommittee, Senator BOND, on all of their hard work.

Mr. President, I have a table prepared by the Budget Committee which shows the official scoring of the legislative branch appropriations bill and I ask unanimous consent that it be inserted in the RECORD at the appropriate point.

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

SENATE BUDGET COMMITTEE SCORING OF H.R. 2699

DISTRICT OF COLUMBIA SUBCOMMITTEE—SPENDING TOTALS

[In billions of dollars]

Bill summary	Budget authority	Outlays
H.R. 2699:		
New Budget Authority and outlays	0.7	0.7
Enacted to date	0	.....
Adjustment to conform mandatory programs to resolution assumptions	0	0
Scorekeeping adjustments	0	0
Bill total	.7	.7
Senate 602(b) allocation	.7	.7
Total difference	.....	0
Discretionary:		
Domestic	.7	.7
Senate 602(b)	.7	.7
Difference	.....	.....
International	0	0
Senate 602(b)	0	0
Difference	0	0
Defense	0	0
Senate 602(b)	0	0
Difference	0	0
Total discretionary spending	.7	.7
Mandatory spending	0	0
Mandatory allocation	0	0
Difference	0	0
Discretionary total above (+) or below (−):		
President's request	.....	.....
Senate-passed bill	NA	NA
House-passed bill	.....	.....

AMENDMENT NO. 801

(Purpose: To correct printing errors)

Mr. ADAMS. Mr. President, pursuant to the statement of the majority leader, I send two amendments to the desk and ask they be considered en bloc. These are the amendments previously referred to as being technical amendments.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. ADAMS], proposes an amendment numbered 801.

Mr. ADAMS. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 4 of the bill, at line 13:
Delete "$949,000" and insert "$799,000".
On page 8 of the bill, at line 8:
Delete "931,785,000" and insert "$931,636,000".

Mr. ADAMS. These amendments are technical. They have been approved by both sides. They are to correct printing errors in the figures that appear in the bill and do not affect the total Federal funds we are appropriating.

Mr. BOND. We have no objection to these amendments.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 801) was agreed to.

Mr. ADAMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. ADAMS. Mr. President, these amendments having been agreed to, and we having completed debate on this bill, I suggest we might proceed with completion of the bill.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 2699), as amended, was passed.

Mr. ADAMS. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. ADAMS. Mr. President, I move the Senate insist on its amendments and request a conference with the House of Representatives thereon; and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. ADAMS, Mr. FOWLER, Mr. KERREY, Mr. BYRD, Mr. BOND, Mr. GORTON, and Mr. HATFIELD, conferees on the part of the Senate.

Mr. ADAMS. 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.

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, SUNDRY INDEPENDENT AGENCIES, COMMISSIONS, CORPORATIONS, AND OFFICES APPROPRIATION ACT, FISCAL YEAR 1992

The Senate continued with the consideration of the bill.

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.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that a cloture motion be deemed to have been filed on the Wirth amendment No. 794, and that a vote on the motion to invoke cloture on the Wirth amendment No. 794 occur at 7:20 p.m. today, with the mandatory live quorum having been waived.

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

Mr. MITCHELL. Mr. President, I further ask unanimous consent that if cloture is invoked, the Senate proceed as provided under rule XXII, and that the Kerrey amendment No. 795 be considered germane to the Wirth amendment No. 794; that if cloture is not invoked, the Wirth and Kerrey amendments be withdrawn and the Senate then, without intervening action or debate, proceed to third reading and final passage of H.R. 2519.

I further ask unanimous consent that upon passage of H.R. 2519, the Senate then vote on the motion to invoke cloture on the motion to proceed to S. 250, the motor voter bill, with the mandatory live quorum having been waived.

Mr. President, I further ask unanimous consent that the majority leader, following consultation with the Republican leader, may proceed at any time with consideration of Calendar No. 149, S. 1367, the China MFN bill, notwithstanding the provisions of rule XXII.

The PRESIDING OFFICER. Is there objection to the unanimous consent request offered by the majority leader?

Mr. DOLE. No objection.

The PRESIDING OFFICER. Is there objection?

The Senator from Nebraska?

Mr. KERREY. Mr. President, reserving my right to object, I am not sure I will object; I want to be sure I understood what the distinguished majority leader was requesting there.

It was my understanding that I would still have the opportunity to present my amendment on the VA-HUD and independent agency bill. Is that included?

Mr. MITCHELL. If cloture is not invoked?

Mr. KERREY. If cloture is not invoked.

Mr. MITCHELL. That is not correct. The agreement contemplates that the Wirth and Kerrey amendments would be withdrawn if cloture is not invoked.

If that is inconsistent with the understanding of the Senator, then, Mr. President, I suggest the absence of a quorum to discuss it. I had been advised that this agreement was acceptable to all concerned. If that is not correct, then I will withhold propounding the agreement.

Mr. KERREY. Mr. President, I object to that unanimous consent on that basis.

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. KERREY. 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. KERREY. Mr. President, during the quorum call, I conferred with the distinguished Senator from Utah about the concern of trying to get a report that was done and presented to the Congress and to the Resolution Trust Corporation on December 26, 1990. My concern is that the full report be released to the public and not just provided as a private document for Members of the Senate or Members of the House of Representatives to review—that the public have access to the report.

In previous discussions, I have indicated, it seems to me, looking at the report itself, that there is nothing in there that should not be released; that there is no compelling reason to withhold it.

I would like at this time to engage in a colloquy with the distinguished Senator from Utah about his willingness to join with me in writing the Resolution Trust Corporation, particularly the Chairman of the Resolution Trust Corporation, Mr. Seidman, a letter urging them in their July 31 meeting to release the full Steptoe & Johnson report to the public.

Mr. GARN. Mr. President, I will say to my friend from Nebraska that I agree with him. I do not have any objection to the release of that report. As a matter of fact, I think it should be. I will be happy to compose a letter with him jointly signed to ask them to make that report public.

Mr. KERREY. Mr. President, I appreciate that support. I discussed on several occasions that the Resolution Trust Corporation Board was very nervous about potential legal action. Indeed, one reason I wanted to get it in statute was to give them confidence to make this report public as opposed to simply providing them a letter.

I am wondering, again, if the distinguished Senator from Utah would consider putting this perhaps in the committee report of the banking legislation. We discussed that as well as a possible follow-on if on July 30, when the RTC meet, they find themselves again saying that they are concerned about potential legal liability. I am not suggesting that will happen.

Mr. Seidman, at the Banking Committee hearing in May, indicated that he would be willing to release the report. I am not sure that will happen. I was wondering if the distinguished Senator from Utah would be willing to take that follow-on action after July 30 if the RTC Board voted in the negative.

Mr. GARN. In response to the distinguished Senator from Nebraska, the answer is simply yes, I would be.

Mr. KERREY. I appreciate that very much, Mr. President.

I withdraw my objection to the request of the distinguished majority leader.

I yield the floor.

Mr. MITCHELL. Mr. President, I renew my request.

The PRESIDING OFFICER. Is there objection to the request of the majority leader? Without objection, it is so ordered.

Mr. GARN. Mr. President, I ask unanimous consent that letters I have received from the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System be printed in the RECORD at this point.

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

FEDERAL DEPOSIT
INSURANCE CORPORATION,
Washington, DC, July 10, 1991.

Hon. JAKE GARN,
Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR GARN: Thank you for your letter requesting an analysis and our comments on a proposed amendment by Senator WIRTH to S. 1241, the Crime Control Bill.

We understand the intent of the Wirth Amendment is to require the public release of reports of examination for FDIC-insured institutions which have failed. However, as the enclosed brief analysis of the amendment concludes, the regulatory agencies also will be required to release the exam reports for many healthy, open insured institutions. We are concerned that the Wirth Amendment will discourage healthy institutions from purchasing failed banks and thrifts. In summary, the examination process and the insurance fund will suffer if this amendment is adopted.

Regardless of whether the amendment applies to open or closed institutions, we have serious concerns about the effect of the amendment. To understand the impact of the Wirth Amendment disclosure requirements, it is necessary to understand the nature of the contents of reports of examination. Bank examination reports contain detailed descriptions of all criticized loans and other personal financial information about the bank's customers. Information that has been provided by confidential sources about the bank, its management and customers is in the report. The examination about the bank and its operations which, if publicly disclosed and thereby available to competitors, could place the insured institution at a substantial competitive disadvantage. Finally, the efficacy of the examination process is dependent upon the cooperation and willingness of an institution's management to provide highly sensitive information that otherwise would be difficult or even impossible for the examiners to obtain and of which they may be completely unaware.

Public disclosure could cause examiners to be less willing to state their frank and full opinions if they may be subject to public scrutiny and second guessing. The entire examination process, even for those banks in no danger of failing, would likely become much more adversarial as the climate changed. The results would be reduced efficiency and increased costs and delays. There may be an increased tendency on the part of bank management to take issue with examiners more readily and more vocally over relatively minor matters. This tendency may be magnified in the follow-up supervisory process to obtain correction of violations or unsound practices.

Finally, the General Accounting Office currently has full access to examination reports. Moreover, in granting GAO this authority, Congress recognized the importance of maintaining confidentiality of this information and thus, subjected the GAO to sanctions for breaching confidentiality.

Please contact us if you have any further questions.

Sincerely,

L. WILLIAM SEIDMAN,
Chairman.

ANALYSIS OF AMENDMENT TO BE OFFERED BY SENATOR WIRTH

Section 01 requires that the bank regulators, including the Federal Reserve, the Comptroller of the Currency, the Office of Thrift Supervision, and the FDIC, "publish and make available to the public reports of examination" of certain insured depository institutions under specified circumstances. The institutions include any bank or thrift whose assets or liabilities have been transferred to the FSLIC Resolution Fund or to the Resolution Trust Corporation ("RTC") and any Bank that is a member of the Bank Insurance Fund ("BIF") that has during the fiscal year either (1) failed or (2) received funds from BIF, if the BIF either has outstanding loans or has received funds from the Treasury, the Federal Financing Bank, or a Federal Reserve Bank, or if the BIF has a negative balance. It also applies to any institution insured by the Savings Association Insurance Fund ("SAIF") under the same circumstances.

The applicability of this Amendment will take immediate effect as to failed thrifts since the FSLIC Resolution Fund and the RTC have received Treasury funds and will be almost immediately effective as to the BIF since funds will be borrowed in the very near future from the Federal Financing Bank to complete the resolution of the Bank of New England. It also is anticipated that the BIF will borrow from the Treasury by the end of 1991.

As drafted, the Wirth Amendment will apply to all failed insured thrifts and banks whether they are acquired with assistance or not, and will require disclosure of all examination reports for the five years prior to the failure. In addition, and more importantly, it

will apply to any healthy insured bank or thrift that acquires a failed institution or any of its liabilities since the amendment applies to any insured institution that "received funds" from BIF—such payments in purchase and assumption transactions are generally to the acquiring entity. Thus, the Amendment will have a highly detrimental effect on the ability of the FDIC and the RTC to attract bids for failed institutions from healthy banks and thrifts. It also will apply to any open and operating insured institution that has received open assistance either from BIF or, in the future, SAIF to prevent the failure of the institution. Finally, the Wirth Amendment will apply to any bank or thrift that serves as an agent of the FDIC in an insured deposit transfer to pay depositors of a failed bank or thrift their insured deposits (a cost effective method utilized by the FDIC to quickly and efficiently make insured deposits available to depositors of failed institutions that are to be resolved by liquidation) since the funds to pay off the depositors will be "received" from an insurance fund.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
Washington, DC, July 10, 1991.

Hon. JAKE GARN,
Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR: You have requested our analysis and comments regarding the scope and coverage of an amendment to the crime bill that has been offered by Senator Wirth to release publicly examination reports of certain insured depository institutions.

The amendment would require each of the Federal banking agencies to make publicly available examination reports of any insured depository institution (and the holding company of that institution) that has failed or that has received assistance from the FDIC if, during the year that the institution failed or received assistance, the FDIC had any loans outstanding to the Department of the Treasury, the Federal Financing Bank or any Federal Reserve Bank. As written, the amendment would apply both to open institutions that have received assistance from the FDIC under section 13(c) of the Federal Deposit Insurance Act as well as to institutions that are closed and re-opened under the management of a new owner with FDIC assistance. The amendment would also apply to any closed depository institution, any institution that is transferred to a bridge bank, and any institution that transfers any assets to the FSLIC Resolution Fund or the Resolution Trust Corporation Fund. Reports of examination of these institutions as well as their holding companies for the five years preceding failure of the institution or receipt of FDIC assistance would be made public.

The amendment does not require that the outstanding obligation of the FDIC be incurred in connection with the resolution of the particular insured institution whose examination reports are released. Rather, by its terms, the amendment would require release of examination reports for any institution aided by the FDIC during a year that the FDIC had an outstanding obligation—for any purpose—to the Treasury, Federal Financing Bank or any Federal Reserve Bank. Consequently, reports of examination for open banks that have received any type of FDIC assistance must be made public if, during the year that the assistance is given, the FDIC has assumed a loan from a Federal Reserve Bank in connection with resolution of another institution.

We are concerned about the public release of examination reports. These reports contain confidential financial information regarding individual and corporate customers of the depository institution that is not publicly available from any other source. Release of this information could represent a serious intrusion on the privacy of these customers.

Public release of examination reports could also convert the examination process into an adversarial procedure that would greatly detract from the usefulness of examinations as a procedure for identifying and correcting potential problems at insured depository institutions. Concern that current examination reports might be publicly released at some time in the future would undoubtedly lead depository institutions to focus undue attention on the characterization of problems in the examination report and reduce the willingness of institutions to admit to potential problems in the report and correct those problems. Instead, depository institutions would focus on denying identified problems and attempting to justify past actions. This would greatly reduce the effectiveness of the examination process.

We are also concerned about the effect that release of examination reports may have on institutions that remain open after having received FDIC assistance. The FDIC has authority to provide assistance to insured institutions on an open-institution basis. Moreover, an institution may remain open following a sale of the institution with FDIC assistance to a new owner. Public release of examination reports for the 5 year period prior to the revitalization of these institutions may confuse the public regarding the health of the institution following FDIC assistance, and could jeopardize the ability of the institution to continue to operate. This could increase the overall costs to the FDIC of resolving troubled institutions.

We also wish to bring to your attention that the amendment, perhaps unintentionally, would appear to require public disclosure of the examination reports of banks that engage in ordinary discount window borrowing. Section 1 of the amendment requires publication of examination reports of each institution described in section 4 and any holding company of that institution. Section 4 defines institutions that have "received funds" to include any insured depository institution that has received cash or other valuable consideration from any Federal Reserve Bank in the form of a loan. This would cover discount window borrowing. A large number of banks that are not experiencing significant asset quality or other financial problems borrow from the discount window on a short term or seasonal basis. This amendment could discourage these institutions from borrowing from the discount window and effectively deprive them of this appropriate source of liquidity.

I hope this letter is of assistance, and would be happy to provide further information on this amendment at your request.

Sincerely,

ALAN GREENSPAN,
Chairman.

Mr. HARKIN. Mr. President, I would like to associate myself with the remarks of my friend from Colorado. His amendment is crucial to finding out what really happened in the 1988 S&L deals.

Mr. President, it is simply impossible for us to get a complete picture of what occurred without this information being made public. While it is within our authority to subpoena the records of the RTC or to call witnesses to testify before our committees, so often we are stymied in our investigations by the fact that we may not know what information to request of the bureaucracy or what questions to ask—and, on the most sensitive tasks of their jobs, regulators may not be totally forthcoming.

In order to assist in our efforts to oversee the S&L cleanup and to make the administration accountable for its decisions, the Wirth amendment provides for the public release of case records of bank prosecutions and out-of-court settlements. Should this amendment be adopted, we will no longer have to rely on hit-or-miss questioning or the investigative reporting of the press to ferret out administrative bungling or malfeasance. And the many members of the press and other investigators will be able to assist in that effort.

The public deserves to know how hundreds of billions of its tax dollars are spent. And yet, the record of public disclosure involving the Federal Government's handling of the S&L cleanup has been disgraceful. Until now, the logic behind highly questionable resales of bankrupt thrifts, such as Bluebonnet Savings in Texas, has been hidden from public view. At that time, Mr. James Fail, an insurance executive whose company was found guilty of securities fraud in 1976, put up only $1,000 of his own money to purchase 15 failed S&L's and, in return, received $1.85 billion in tax breaks from the Government. That's the kind of deal that needs examination and will be exposed to the light of day should this amendment be adopted.

All in all, the costs of this and other sweetheart 1988 deals may top, according to the GAO, $65 billion. In one single deal, alone, Mr. President, the purchase of Houston's First Gibraltar Bank may have cost the taxpayers as much as $8.8 billion in inducements and insurance bailouts. Think of the waste and think of the expense—think, also, of the lost opportunities.

I am concerned that a system of thrift resolution that works outside the public eye will be subject to fraud and abuse. Already we have witnessed a number of questionable deals made in the name of savings and loan resolution. Were those deals subject to public disclosure, would the outcomes have been different? I'm willing to bet they would be.

Mr. President, the only way we can have accountability in our democratic system is to adopt this kind of amendment. The ability of Congress to have real oversight and the right of the people to be informed about what their Government is doing with their money, loses all meaning without access to full

and complete information. That is the principle behind the Wirth amendment.

I am frankly surprised that this amendment has attracted so much opposition. What is there to hide?

Mr. WOFFORD. Mr. President, I rise today in support of the amendment offered by my distinguished colleague from Colorado. This amendment will help ensure that the taxpayer financed cleanup of the savings and loan industry will be conducted in an open and responsible manner.

We know the bailout is costing a great deal of money. America's taxpayers have already committed $80 billion and, recently, the administration asked for $80 billion more. The Congressional Budget Office has stated that more than the administration's request will be needed before we finish cleaning up this mess. But, what we don't know is where the money is going. The public has been told that the money is used to protect depositors. But, the American people don't know how their Government is actually spending the money. Within the bounds of privacy, we should know with whom the deals are being made and the terms of those deals.

It is said that sunshine, which means full disclosure, is the best disinfectant. And this is especially true with respect to regulatory action by Government. The Securities and Exchange Commission discloses its enforcement actions against brokers, dealers, firms, and individuals. Such disclosure provides assurance that the Government is acting in the public's best interest. We should expect no less from banking regulators who are controlling billions of taxpayers' dollars.

Our taxpayers are questioning as never before whether Government is spending their hard-earned dollars wisely. We simply must restore their confidence in us and our ability to manage Government efficiently.

We need to open the windows and let the light shine on the savings and loan bailout. We need to be assured that the administration's regulators aren't making "sweetheart" deals. We need to be assured that taxpayers' dollars are being spent responsibly.

Mr. President, I yield the floor.

CLOTURE MOTION VOTE

The PRESIDING OFFICER. The question is, is it the sense of the Senate that debate on the Wirth amendment, No. 794, shall be brought to a close? The live quorum has been waived. The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Carolina [Mr. SANFORD] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from New Hampshire [Mr. SMITH] is necessarily absent.

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

The yeas and nays resulted—yeas 57, nays 40, as follows:

[Rollcall Vote No. 139 Leg.]

YEAS—57

Adams	Dodd	Lieberman
Akaka	Exon	McCain
Baucus	Ford	Metzenbaum
Bentsen	Fowler	Mikulski
Biden	Glenn	Mitchell
Bingaman	Gore	Moynihan
Boren	Graham	Nunn
Bradley	Harkin	Pell
Breaux	Heflin	Reid
Brown	Hollings	Riegle
Bryan	Inouye	Robb
Bumpers	Johnston	Rockefeller
Burdick	Kennedy	Sarbanes
Byrd	Kerrey	Sasser
Conrad	Kerry	Shelby
Cranston	Kohl	Simon
Daschle	Lautenberg	Wellstone
DeConcini	Leahy	Wirth
Dixon	Levin	Wofford

NAYS—40

Bond	Gramm	Packwood
Burns	Grassley	Pressler
Chafee	Hatch	Roth
Coats	Hatfield	Rudman
Cochran	Helms	Seymour
Cohen	Jeffords	Simpson
Craig	Kassebaum	Specter
D'Amato	Kasten	Stevens
Danforth	Lott	Symms
Dole	Lugar	Thurmond
Domenici	Mack	Wallop
Durenberger	McConnell	Warner
Garn	Murkowski	
Gorton	Nickles	

NOT VOTING—3

Pryor	Sanford	Smith

The PRESIDING OFFICER. On this vote, the yeas are 57, and the nays are 40. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

AMENDMENT NOS. 794 AND 795 WITHDRAWN

The PRESIDING OFFICER. Under the previous order, amendment Nos. 794 and 795 are withdrawn.

ENVIRONMENTAL PROGRAMS

Mr. LAUTENBERG. Mr. President, I rise in support of the fiscal year 1992 VA, HUD, and Independent Agencies appropriations bill. I commend the leadership of the subcommittee Chair, Senator MIKULSKI, who has put together a good bill under difficult constraints.

This bill makes a major financial commitment to the protection of our Nation's environment. I want to highlight aspects of the environmental spending in this bill, as well as projects of special importance in New Jersey which I worked to secure, as a member of the VA, HUD, and Independent Agencies Subcommittee.

Mr. President, I am pleased that total EPA funding in the bill would increase by about 10 percent, which includes increases for the asbestos program, nonpoint pollution, and construction grants. The $2.4 billion appropriation for the sewage treatment program, a $300 million increase over last year, would mean a $14 million increase for New Jersey, for a total of $98.6 million.

And the bill provides almost $52 million to fund nonpoint program efforts authorized by the Clean Water Act. Inexplicably, the administration proposed to cut this funding by almost 50 percent while at the same time saying that nonpoint pollution is responsible for over half of the pollution adversely affecting our Nation's waters. The committee bill rejects this foolish cut.

The bill maintains funding for Superfund at last year's level, but includes report language aimed at increasing actual cleanup funding at the level requested by the President.

Particularly in light of recent reports of waste in the Superfund contracting program, the subcommittee has taken a more cautious approach to funding Superfund. The Chair, Senator MIKULSKI, has attempted to target the bill's proposed cuts below the President's budget to those wasteful areas identified in these recent reports.

At my request, the General Accounting Office is examining the question of wasteful contracting practices, and I am hopeful that this independent audit will achieve greater efficiency in the program. The key is to make sure that we are not impeding EPA's ability to move forward with cleanups, and that we are imposing any proposed cuts on those areas of real inefficiency in the program. As we move ahead to conference, I look forward to working with Chair MIKULSKI to achieve both these goals for Superfund.

I am pleased that the bill includes $3 million for grants under title III of Superfund Amendments and Reauthorization Act.

Mr. President, the bill also contains at my request $700,000 for lakewater-quality activities at Cranberry Lake, Lake Wawayanda, Lake Marcia, and Sylvan Lake in my State of New Jersey. With this funding, the New Jersey Department of Environmental Protection will be able to perform studies and lake-quality restoration work on at least four priority projects in New Jersey. These lakes and many others throughout my State which were once used for recreation are now suffering from the effects of pollution. This money is a step in the right direction toward cleaning up lakes around our State and returning them to their natural condition.

The bill also contains $1.6 million for the Integrated Pollution Prevention Initiative at the New Jersey Institute of Technology [NJIT].

In its 1987 report, From Pollution To Prevention: A Progress Report on Waste Reduction, the Office of Technology Assessment found that pollution prevention efforts have proceeded slowly because industry lacks the information about the opportunities and

benefits of source reduction. NJIT's proposal will help address the concerns raised in OTA's report.

Source reduction of chemicals, pollutants, and wastes provides significant health and environmental benefits, as well as cost savings. NJIT has proposed a pollution prevention initiative that will bring together academic institutions, industry, and the Federal Government in a multidisciplinary program that will seek increased utilization of waste reduction philosophies and techniques in industrial production.

NJIT is well equipped to carry out such an ambitious program. The institute is home to EPA's Northeast Hazardous Substance Research Center and also houses a Hazardous Substance Management Research Center that has the participation of various academic institutions and 32 industrial members. Furthermore, NJIT has well-established management and public service programs that the school will utilize in conjunction with its technical programs in an effort to produce engineering and managerial professionals who will be able to fully incorporate pollution prevention strategies in the workplace.

Mr. President, I'm very grateful to Senator MIKULSKI for including language in both the bill and report to stop EPA from any further spending on its proposed environmental technology or E-Tech lab in Edison.

Last year, at my request the subcommittee included language in the fiscal year 1991 VA, HUD, and Independent Agencies Appropriations Act that prohibited EPA from spending funds allocated in fiscal year 1988 for the design and renovation of the E-Tech lab. I requested that the subcommittee include this language because EPA had failed to adequately address the environmental concerns of local officials and the community. Furthermore, an informal EPA request for an additional $8 million for the project raised serious questions about the overall scope and design of the project.

The intent of the language included in last year's act was to prohibit EPA from constructing the E-Tech facility and to see if the Agency could satisfy State and local concerns. However, EPA has done neither, despite the fact that Congress gave the Agency ample time to do so. During the past year opposition to the project has grown and EPA failed to include a request for E-Tech in its fiscal year 1992 budget proposal.

Given EPA's lack of a budget request and its failure to satisfy concerns in New Jersey, I asked Senator MIKULSKI to include language in the subcommittee's bill and report that would permanently halt construction of E-Tech.

To permit E-Tech to go forward, in the face of community opposition, and considering the densely populated nature of the area, makes no sense.

As a coauthor of Superfund Amendments and Reauthorization Act of 1986, I continue to support an effective Federal research effort to find ways to treat hazardous waste. At my request, the Senate Appropriations Committee urged EPA to put forth alternatives to E-Tech at Edison to promote a vigorous, national program of hazardous waste research. I hope EPA will take the committee's language to heart and come up with a safer alternative to E-Tech in the near future.

The bill before us also includes funding for efforts to control medical waste, which periodically soils the beaches of my State and others, and threatens the health and peace of mind of Americans. The bill provides $1.4 million for grants to States like New Jersey to enforce the Medical Waste Tracking Act. The bill also requires the EPA to allocate sufficient funds within its budget to implement the act on the Federal level.

The committee report includes important language regarding radon which is estimated to cause 16,000 lung cancer deaths a year. Elevated levels of radon are relatively easy and cheap to reduce. But we need to test homes and schools for radon and mitigate those with radon presenting a health risk.

In 1988, the GAO issued a report prepared at my request which concluded that HUD was failing to act to address radon in our Nation's homes. So I wrote legislation which was included in the 1988 McKinney Act amendments requiring HUD to develop a policy to address radon in a number of its housing programs. This policy, which was just released 18 months late, says HUD will delay action for another 4 years while it conducts additional research. At a hearing of the Subcommittee on Superfund, Ocean, and Water Protection that I chaired earlier this year on the subject of radon, both GAO and EPA said that HUD has enough information to begin to act now.

So I'm pleased that the committee report requires HUD to redesign its policy within 60 days to act and to report to the committee within 6 months on its implementation. The report also directs EPA to develop guidance outlining testing and mitigation procedures for multifamily buildings in HUD's inventory.

The bill contains $57 million for the Asbestos School Loan and Grant Program. While this is less than the amount authorized in the Asbestos School Hazard Abatement Act Amendments of 1990 which I authored, it is $10 million above the House request and it rejects the administration's proposal to eliminate funding for this program.

I'm also pleased that the Senate adopted an amendment to provide EPA with authority to spend up to $1 million to fund operations of the Chemical Safety and Hazard Investigation Board which was authorized by the Clean Air Act Amendments of 1990.

Mr. President, this bill is an important one for the protection of our Nation's environment and for the cleanup of pollution that scars our landscape and threatens the public health. I urge my colleagues to support the environmental appropriations in this bill.

SCIENCE FUNDING

Mr. LAUTENBERG. Mr. President, this bill makes important investments in the development of American technology, and the preparation of America's next generation of scientists and innovators. It includes critical funding for the National Science Foundation and NASA, as well as research functions of the EPA, VA, and HUD.

I do want to note that the subcommittee has also included an increase in funds for two satellites systems—the Earth Observation System [EOS] and Landsat—that will improve the quality of our global climate research program. I was pleased to seek this funding and to work with the Chair on its inclusion in the bill.

EOS is the cornerstone of the U.S. global climate and will provide the scientific community with the necessary data to understand the rate, causes, and effects of global climate change, including such effects as climate warming, ozone depletion, deforestation, and acid rain. This bill provides $286 million for EOS, $95 million above last year's level. The bill also provides $5 million for long-lead parts for Landsat 7, the next stage of the Landsat satellite system, which is also essential for global climate change, deforestation, and acid rain. This bill provides $286 million for EOS, $95 million above last year's level. The bill also provides $5 million for long-lead parts for Landsat 7, the next stage of the Landsat satellite system, which is also essential for global climate change research and also has national security applications. The Landsat system was used to collect information during Operation Desert Storm. I am proud that scientists and researchers at General Electric facilities in New Jersey are developing these innovative projects.

The bill also includes $3.1 million for the continued development of the rotary engine for general aviation aircraft, a project being developed in Wood-Ridge, NJ.

Within the appropriation for NSF, the bill also includes $465 million for the education and human resource activities of NSF, $143 million over last year's level. The bill specifically includes $46 million for facilities modernization and instrumentation for our Nation's colleges and universities. The funding levels in the bill will enhance our efforts to prepare teachers of science, to support graduate research, and to upgrade the laboratories where America's scientists work. Our Nation's academic infrastructure is crum-

bling and the funding of this program takes a small step in rectifying this situation.

Mr. President, America's competitiveness depends on its technological edge. This bill makes an important investment in activities designed to keep that edge.

HOUSING AND COMMUNITY DEVELOPMENT

Mr. LAUTENBERG. Mr. President, I rise to support the fiscal year 1992 VA, HUD, and independent agencies appropriations bill, and to comment on the important strides the bill makes in the area of housing and community development. The Chair of the subcommittee, Senator MIKULSKI, has put together a bill that will provide welcome increases in programs designed to provide safe and adequate housing for Americans, and to promote the economic development of our cities and towns.

I am very pleased that the bill reported by the Appropriations Committee includes $165 million for the Public and Assisted Housing Drug Elimination Act. This program, which I developed about 3 years ago, provides much-needed assistance to housing authorities, owners of assisted housing, and residents of federally subsidized housing, to fight the plague of drug-related violence in many housing projects.

Mr. President, the residents of public and assisted housing, among the poorest of all Americans, are suffering disproportionately from the dramatic increase in drug-related crime over the past several years. Too many projects have become virtual war zones, controlled by armies of violent, heavily armed drug dealers. With severe violence routine, many residents, particularly young children, are afraid even to leave their apartments at night.

The Public and Assisted Housing Drug Elimination Act is the only Federal program designed specifically to deal with this problem, and is the most effective vehicle for such efforts. Last year, grants were awarded to 349 public housing authorities and 15 Indian housing authorities in 46 States, the District of Columbia, and Puerto Rico. Applications for grants in the current fiscal year, for which $150 million has been appropriated, are now being accepted by HUD.

The $165 million provided in this bill represents the full amount requested by the administration, and virtually the full authorized level of the program. It also includes $10 million that will be available for grants to owners of assisted housing projects, many of which face the same types of drug problems as those in public housing. Last year, with my support, the Congress expanded this program to include assisted housing.

As I discussed on the floor during consideration of last year's housing authorization bill, the owners of assisted housing have the primary responsibility for providing safe living conditions. However, many of these owners face an unforseeable explosion in drug-related crime and lack the resources to respond effectively. Under these circumstances, their residents should not be left at the mercy of violent drug criminals.

Last year's housing authorization bill allows HUD to establish separate selection criteria for consideration of applications from owners of assisted housing. Given the limited funds available, I am hopeful that these selection criteria will help HUD target grants to assist housing owners who could not otherwise meet their obligation to provide safe housing.

Another housing program in which I have been particularly involved is the HOME Program, which provides support for State and local governments, and nonprofit, community-based groups, for the development of affordable housing. The Community Housing Partnership title of the HOME Program is based on legislation I introduced in the 101st Congress, the Community Housing Partnership Act.

This bill contains $2 billion for the HOME Program, more than most supporters of the program were expecting or even hoping. While many housing advocates were asking for $1.5 billion for HOME, I went further and pushed for the full amount. And Senators MIKULSKI and GARN deserve real credit for finding the funds to provide this pleasant surprise. New Jersey can expect to receive $66 million in HOME funding under this appropriation.

I am also pleased that the bill includes a significant increase for the Community Development Block Grant Program. This is an essential tool for local governments seeking to meet urgent community development and housing needs. The bill provides $3.4 billion for the CDBG Program, almost $500 million above the President's request and $200 million above last year's level. That translates into $108.7 million for New Jersey.

Mr. President, I also want to note the funding provided in the bill for public housing operating subsidies and modernization. Public housing authorities face enormous problems in their efforts to serve their residents, and I'm glad we were able to avoid the severe cut in operating subsidies that was included in the House version of this legislation. The funding provided in the bill for modernization is also encouraging, given the severe needs for substantial rehabilitation of many housing projects.

Mr. President, I also am pleased that funding that has been included in this bill for the AIDS Housing Opportunities Act, a new program that was included in the omnibus housing bill last year. This program provides special housing assistance for people with AIDS. Under the program, funds are distributed largely to cities and States, which may use the funds for a number of housing services, including rental subsidies, construction of new housing, renovation of existing housing, homeless prevention programs, community residential facilities, information services, and other housing programs. Given the severity of the AIDS crisis, and the difficulty that many of those with the disease face in securing housing, I am pleased that the bill includes $50 million for the program, though I would have preferred a higher level.

I am also pleased that the bill includes $500,000 that I requested for a housing technology demonstration program that has been developed by the New Jersey Institute of Technology.

Given the severe shortage of affordable housing in much of the country, it is important that technologies be developed to reduce the costs of housing production. Yet presently, there are real disincentives for the home-building industry to invest capital in the development of new technological innovations. These innovations typically require many years of work, and the expenditure of large sums to pay for research, development, material testing, the construction of prototypes, code testing and approvals, tooling, and manufacturing and marketing. Given the fluctuations in the housing market, it is generally uncertain whether there will be a market after this lengthy process is complete.

A study by the New Jersey Institute of Technology found that there are many new ideas and technologies for improving housing quality and reducing costs that could be developed under the appropriate conditions. NJIT worked with a variety of building industry and State officials, and developed a proposal for a housing technology demonstration park for the design, development, and production of housing built with innovative materials, methods, and components. With the $500,000 provided in the bill, this project should provide a useful vehicle to test, demonstrate, and market affordable housing technologies.

I also want to note certain provisions that will have a direct, positive impact on several specific communities in New Jersey.

First, the bill includes at my request $2.5 million for the St. Joseph's School for the Blind in Jersey City, NJ. This is the State's only school for the blind and multidisabled, and serves the needs of approximately 60 students. Over 50 percent of students are from low-income families who receive public assistance.

Residential students at St. Joseph's are currently housed in old, cramped quarters on the second and third floors of the school. The proposed residential facility will be located off campus, to provide a more mainstreamed environment for the children and will be built

on a parcel of land that the city of Jersey City donated to the school. The city has also proposed a comprehensive redevelopment plan for this section of Jersey City, called the Heights section, which will include a police and fire station, a water company building, a recreation area, and new and renovated housing.

The bill also includes $100,000 that I requested for improvements to the West Side Community Center in Asbury Park, NJ. This is a recreational center open to all community residents that serves as a hub for community activities, such as a summer day camp, drug abuse prevention classes, theater, sports, and child care.

The center has found that many senior citizens residing in the city are eating poorly, and wants to construct a kitchen that would be used to prepare hot meals for the elderly. In addition, the kitchen would be used for a summer box-lunch program for youth, which would complement existing summer recreation programs at the center.

I also want to point out an allocation of $20,000 that I sought for a commercial redevelopment feasibility study for Clayton, NJ. Clayton is a small town with low- to middle-income families and many senior citizens on fixed incomes. The town is seeking to bring back its downtown, which has deteriorated, and is hoping to implement a plan to revitalize that area.

The bill also includes at my request $50,000 for a feasibility study on the creation of a business park in Wildwood, NJ. Wildwood is a municipality that has suffered economically, and there is a real need to revitalize its downtown. This funding could help, by laying the groundwork for a business incubator that could offer reasonably priced space for various uses, such as factory outlet facilities, a vegetable product center, and a retail outlet for handicapped and special education adults and youth. I am hopeful that the study can be completed for less than the full $50,000, in which case funds also could be applied to begin preliminary work on the project.

In addition, the bill includes at my request $80,000 for an initiative to revitalize the central business district in Paulsboro, NJ. This initiative would be part of an effort to improve parking areas, store front facades, and the rehabilitation of a vacant building for senior citizen housing.

I note that the bill also includes $500,000 for the Newark Public Library to develop reading rooms at public housing projects and $2 million for job and economic revitalization in the city.

Mr. President, these New Jersey initiatives are consistent with the goals of Federal community development programs. They are important to the communities involved, and the many low- and moderate-income residents of these communities.

Finally, I want to thank Senators MIKULSKI and GARN for their help on these matters. They have done an excellent job with this bill in most respects, and they deserve a great amount of credit.

VETERANS PROGRAMS

Mr. LAUTENBERG. Mr. President, I rise in support of the substantial commitment that is made in this bill to the care of our Nation's veterans. Under tight budget constraints, the bill includes substantial increases to meet the growing needs of those who served our Nation. I commend the chair of the subcommittee, Senator MIKULSKI, and the ranking minority member, Senator GARN, for their steadfast support of our veterans.

The bill includes $14.3 billion for veterans medical services and programs, as well as significant funding for medical research and care, special pay for physicians, dentists and nurses, treatment of posttraumatic stress disorder, and housing for homeless veterans. Specifically, the bill includes $227 million for VA medical research. It provides $13.5 billion for medical care. That is $240 million above the President's request for medical care.

Of particular importance to the veterans of New Jersey, where our hospitals have experienced difficulty attracting skilled medical personnel, the bill also includes an additional $53 million for special pay for physicians and dentists, an additional $60 million for special pay for nurses, and an additional $23 million to hire over 400 nurses in areas of greatest need.

The bill also includes $30 million for posttraumatic stress disorder, $10 million over the administration's request.

I also note that the committee has included language in this report accompanying this bill directing the Veterans Affairs Department to address the significant unmet need for magnetic reasonance imaging services in New Jersey. The committee has asked the Department to include an appropriate request in next year's budget to meet this need, and to also provide the committees with a report on this matter.

Mr. President, our military personnel have risked their lives to protect the national security of this country. I'm pleased that the Senate has approved these increases, to help heal the wounds that our veterans still have with them, and to meet their other health care needs. Our veterans deserve no less.

CHANGES IN VETERANS SURVIVOR BENEFITS UNFAIR

Mr. GRAHAM. Mr. President, a change in law was made in the Omnibus Budget Reconciliation Act of 1990 which affects the financial security of veterans' widows and their survivors. Prior to November 1, 1990, widows of deceased veterans were eligible for a number of benefit programs. That eligibility was terminated upon the remarriage of the widow. However, if the second marriage was subsequently terminated by death or divorce, benefits were reinstated.

The Omnibus Budget Reconciliation Act eliminated the right to reinstatement of benefits. At the time this proposal was debated, I do not believe Congress realized this proposal was debated, I do not believe Congress realized the full impact of this proposal. In fact, Mr. President, as a member of the Senate Veterans' Affairs Committee, I supported this proposal.

I have now become aware of the consequences of that action and have introduced legislation, S. 659, to address this injustice.

Mr. President, I ask unanimous consent to include in the RECORD a position statement made by 20 military associations. This statement outlines the unfortunate consequences of the Budget Reconciliation Act for the families of deceased veterans.

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

STATEMENT OF: AIR FORCE ASSOCIATION, AIR FORCE SERGEANTS ASSOCIATION, ASSOCIATION OF MILITARY SURGEONS OF THE UNITED STATES, ASSOCIATION OF U.S. ARMY, COMMISSIONED OFFICERS ASSOCIATION OF THE PUBLIC HEALTH SERVICE, ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE U.S., FLEET RESERVE ASSOCIATION, MARINE CORPS LEAGUE, MARINE CORPS RESERVE OFFICERS ASSOCIATION, NATIONAL ASSOCIATION FOR UNIFORMED SERVICES, NATIONAL GUARD ASSOCIATION OF THE U.S., NATIONAL MILITARY FAMILY ASSOCIATION, NAVAL ENLISTED RESERVE ASSOCIATION, NAVAL RESERVE ASSOCIATION, NAVY LEAGUE OF THE U.S., RESERVE OFFICERS ASSOCIATION, THE MILITARY CHAPLAINS ASSOCIATION, THE RETIRED ENLISTED ASSOCIATION, THE RETIRED OFFICERS ASSOCIATION, U.S. ARMY WARRANT OFFICERS ASSOCIATION

DIC WIDOWS DEVASTATED

The top issue of concern to us is the real and potential financial chaos caused by the Omnibus Budget Reconciliation Act (OBRA) of 1990 (Sec. 8004 of P.L. 101-508 of November 5, 1990) which abruptly terminated—retroactively in some cases—reinstatement of Veterans Dependency and Indemnity Compensation (DIC) benefits to remarried widows who lose their second or subsequent spouse due to death or divorce after October 31, 1990.

This precipitous repeal of a long-standing practice has had devastating consequences for two categories of DIC widows. The first is the widow with young children who elected not to seek full time employment in order to care for her fatherless children. This widow has no career and therefore no pension rights of her own. She elected this option in the secure knowledge that should she remarry she would be protected financially if her second marriage ended.

The second category, DIC widows who have remarried, have been dealt a particularly overwhelming blow. If their second marriage ends many will be penniless. They made financial decisions based on the law that allowed reinstatement of their DIC benefits if their second or subsequent marriage ended.

The extraordinary injustice caused by OBRA is that countless DIC widows already

in a second or subsequent marriage have made irreversible financial decisions based on the law that allowed reinstatement of their DIC benefits if their subsequent marriage ended. Based on the DIC guarantee, widows who married other servicemen agreed with their military spouses recommendation that they select a reduced Survivor Benefit Plan (SBP) annuity or decline SBP coverage entirely. Currently, that election cannot be changed. Even if that window of opportunity reopens in April 1992 as contemplated, the retiree must survive until 1994 before his widow would become eligible for survivor benefits. This is small consolation to the numerous widows who have already experienced the demise of their spouses or others whose spouses are terminally ill.

One of the imponderables in relying on a future SBP election to "pick up the pieces" is how many of these widows, or more probably how few of these widows are remarried to retirees who would be eligible for a second chance at SBP. A more likely scenario, and one reported more frequently to us, is that the widow has remarried a non-retiree and must rely on life insurance alternatives. The "Catch 22" is that many are uninsurable because of terminal illnesses, or the injuries, physical impairments or diseases that qualified them for Veterans Compensation. Others, advanced in years, face prohibitively expensive or unaffordable insurance premiums. If it were not for Congress' action in 1970 to restore DIC they would have purchased insurance when they were younger and the rates more affordable.

Since its enactment, no issue has reverberated more loudly through the veteran's community than this one. Many find it paradoxical that with one hand Congress is reaching out to the impoverished and down-trodden of the world with hundreds of millions of dollars of relief, while with the other they are forsaking the widows of veterans who made this Nation the dominant world force it is today. They ask with bewilderment how this Nation can look today's heroes squarely in the eye and make commitments about future benefits knowing full well that those promises, like DIC reinstatement may be short-lived.

Three examples of the undue hardships caused by OBRA of 1990 will help illustrate the severity of that law on widows.

SORRY, TOO LATE

Case 1: A DIC widow's second husband (a retired officer) died on October 24, 1990. She notified the Service Accounting and Finance Center of this death. She was informed by the Personal Affairs office that due to the situation in Iraq, they could not provide a Personal Affairs Officer for assistance, but would mail a packet which she could take to any VA office to file a claim. That packet arrived on November 7, 1990. Her second husband had elected not to participate in the Survivor Benefit Plan (SBP) because he understood (and left instructions to that effect for her) that in the event he predeceased her, she would be eligible for DIC benefits based on her first husband's service-connected death. She filed a DIC claim through the local VA office on December 18, 1990. To her horror she was notified on March 9, 1991 that the claim had been denied because, "The provisions under the Congressional Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 . . . prohibit the payment of death and indemnity compensation for any claim filed after October 31, 1990."

Case 2: This DIC widow remarried in 1973, knowing that she would be eligible to reinstate DIC if she became single again. On October 2, 1990, because her husband was becoming quite ill, she visited a Veterans Service Office in California, where she was assured she would be eligible to reinstate DIC if her current husband died and that the monthly benefit would be $834. Her husband died on November 7, 1990 after an emergency heart bypass surgery and five weeks in an intensive care unit. This widow was informed on November 27, 1990 that she was not eligible, as of October 31, 1990, to have DIC reinstated.

SHOULD HAVE PLANNED BETTER

Case 3: In 1979, a DIC widow married an officer who remained on active duty until retirement in 1987. In preparation for retirement, he was advised about his retirement benefits and several points were made: Upon his death, the wife would be eligible for reinstatement of DIC payments; DIC benefits would not be reduced by Social Security benefits; military Survivor Benefit Plan (SBP) payments are offset by DIC; if he elected to participate in SBP, SBP would be offset by Social Security at age 62; the decision to participate or not in SBP had to be made prior to retirement and was irrevocable.

Based on these facts, the officer declined SBP coverage. Now terminally ill, OBRA of 1990 has had devastating effects on their spiritual well-being. The assurance that DIC could be reinstated was a substantial and vital part of their financial planning. They are now left without either DIC or any prospects of qualifying for SBP and wonder why they relied on the Government to honor commitments.

These cases provide real world examples of the hundreds of widows who, in consultation with their husbands, planned for their futures in good faith, with the assurance of the U.S. Government that DIC could be reinstated. To deny this assurance now undermines the credibility of this Nation's leaders to the very members who have given the greatest service to their Nation. Veterans and widows alike find it ironic that now, while this grateful Nation is providing well-deserved benefits to veterans and survivors of veterans of Desert Storm, that the same Nation should ignore the plight of the widows whose spouses performed equally meritorious service in previous conflicts.

Savings may prove to be illusory. Numerous widows who were contemplating remarriage have placed those decisions on hold because of OBRA 1990. Their continuation on the DIC rolls will tend to decrease the savings anticipated by Section 8004 of OBRA 1990.

The following chart presents the effects of remarriage and death or divorce of a subsequent spouse on six Federal programs. In most cases, the benefits continue even when the spouse remarries after 55 or 60. VA (DIC) benefits are the only category for which benefits are not reinstated upon death or divorce of a subsequent spouse.

THE EFFECTS OF REMARRIAGE ON VARIOUS SURVIVOR PROGRAMS

Federal program and effect of remarriage	Effect of termination of remarriage thru death or divorce
VA benefits:	
1. Terminate benefits permanently unless marriage is voided or annulled.	1. Not reinstated.
Civil service survivor benefits:	
1. Remarriage under 55 terminates benefits.	1. Benefit reinstated.
2. Remarriage at 55 or over has no impact on benefits.	2. Not applicable.
Federal Employees Compensation act:	
1. Remarriage under 55 terminates benefits.	1. Benefit reinstated.

THE EFFECTS OF REMARRIAGE ON VARIOUS SURVIVOR PROGRAMS—Continued

Federal program and effect of remarriage	Effect of termination of remarriage thru death or divorce
2. Remarriage at 55 or over has no impact on benefits.	2. Not applicable.
Railroad retirement:	
1. Remarriage under 60 (50 if disabled) terminates benefits.	1. Benefit reinstated at reduced rate.
2. Remarriage at 60 or over (50 if disabled) has no impact on benefits.	2. Not applicable.
Social Security:	
1. Remarriage under 60 (50 if disabled) terminates benefits.	1. Benefits reinstated.
2. Remarriage at 60 or over (50 if disabled) has no impact on benefits.	2. Not applicable.
Military survivor benefit plan:	
1. Remarriage under 55 terminates benefits.	1. Benefits reinstated.
2. Remarriage at 55 or over has no impact on benefits.	2. Not applicable.

We are aware of the extraordinary time constraints and budget pressures that were confronting you when the OBRA law steamrolled through the legislative process last fall. Now that the legislative furor has diminished and the moral and financial implications of that decision have become evident, we are optimistic that a better solution exists than to disallow DIC reinstatement. We can state without fear of contradiction that the distinguished members of this committee who have protected the interests of the veteran and his family unwaveringly for years would not knowingly hurt those surviving spouses of our Nation's heroes, who based their financial futures on the good faith commitment made to them by this Nation.

We ask that you repeal the provisions of Sec. 8004 of P.L. 101-508, November 5, 1990. Surely other alternatives exist which would save comparable funds, but would not have such far reaching impacts on our survivors.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Mr. LIEBERMAN. Mr. President, I rise in strong support of the committee amendment which provides that up to $1 million be provided by EPA for the establishment of the Chemical Safety and Hazard Investigation Board.

Mr. President, the only reason we find ourselves in the position of supporting this amendment so late in the appropriations process is because of the administration's attempt to avoid its responsibility under the Clean Air Act to create the Board. Despite the fact that the new Board was specifically patterned after the National Transportation Safety Board, which has been successful in establishing public confidence in its investigation of airline, railroad, and other transportation-related disasters, the administration objected to the structure and failed to act to create the new Board for 7 months after the Clean Air Act was signed into law. It was only 2 days ago, after extensive objections from members of the Senate Environment and Public Works Committee and the House Energy and Commerce Committee that the administration recognized that it cannot choose to ignore those sections of the law which it dislikes.

Dozens of workers have died in chemical plant accidents around the country

so far this year and millions of persons live close enough to chemical plants to be killed or injured if winds carry fumes from explosions into their homes. The purpose of the independent watchdog established by the Congress under the Clean Air Act is to look into the causes of chemical disasters and to report to the public and the chemical industry on what happened and how to prevent it in the future.

In mid-June, an accident at a chemical plant in Charleston, SC, killed 6 people and injured another 33. And the number of accidents at chemical plants has been on the rise. The National Safe Workplace Institute reports that 23 workers have died in 5 accidents so far this year. Compare that to the early 1980's, when less than 10 people a year were killed in chemical plant accidents.

Mr. President, the administration must now put the formation of this Board on the fastest track possible. We must know why these accidents are occurring and what improvements are needed to prevent them in the future. We must not delude ourselves into thinking a Bhopal-like chemical disaster cannot occur here.

AGRICULTURAL CLEAN SWEEP PROGRAM

Mr. KOHL. Mr. President, as we consider the Environmental Protection Agency's budget for fiscal year 1992, I would like to call to the attention of my colleagues a program launched last year in Wisconsin that I believe merits assistance from the EPA in the coming fiscal year. This program—the Agricultural Clean Sweep Program—is designed to provide farmers with a means to dispose of unwanted, outdated and unused agricultural chemicals. Judging by the overwhelming demand for the program in its first year of operation, it is clear to me that we ought to be doing more at the Federal level to encourage this type of pesticide disposal program.

Agricultural Clean Sweep was operated on a demonstration basis in three Wisconsin counties last year. In each of those counties, the Wisconsin Department of Agriculture, Trade and Consumer Protection offered to dispose of all unwanted chemicals collected from farmers at a given site on a given day. The demand for the collection service was overwhelming.

Between the three counties, the department collected more than 39,000 pounds of unwanted chemicals from 270 farmers. Many more farmers who showed up with unwanted chemicals were turned away because of insufficient resources available for the program.

Because of the popularity of the program, the Wisconsin Legislature is currently debating a significant budget increase for the program in fiscal year 1992. If the proposed increase is approved, the department expects to be able to serve 10 to 20 counties over the next 2 years.

Mr. President, I hope that the Wisconsin Legislature will approve a budget increase for this program. But I would also like to see some Federal assistance for the program as well. Estimates show that 20 to 40 percent of farmers in Wisconsin are storing banned pesticides such as DDT, damaged pesticides, or pesticides that have been replaced by more effective products. In fact, the department estimates that Wisconsin farmers are storing 4 million pounds of pesticides that they can't use but can't dispose of. The eventual cost of properly disposing of this volume of chemicals may be as high as $20 million.

This is a big price tag, but the alternative is equally disturbing. Unless we help farmers dispose of agricultural chemicals properly, farmers will either continue to dispose of them improperly—by burying or dumping them—or continue to store them. Either option poses a continued risk to the health of our farm families and our rural areas.

Mr. President, I have not sought funding for this program in this bill because I have been told that the Environmental Protection Agency is attempting to provide funds to assist Wisconsin in its efforts in fiscal year 1992. Given that, I do not wish to intervene prematurely and unnecessarily in this area. I am hopeful that the EPA will, indeed, commit funds to this program, and I will be working with EPA officials to see that they do. But I wanted to bring the Clean Sweep Program to the attention of my colleagues because it is clearly a successful program, a needed program, and a type of program that demands and deserves Federal attention.

NATIONAL AND COMMUNITY SERVICE ACT

Mr. WOFFORD. Mr. President, I rise in support of this legislation, and I commend my colleague from Maryland for her leadership.

I especially applaud the Senate subcommittee's inclusion of funding for the National and Community Service Act. This action shows the commitment of the Federal Government to encouraging active duty citizenship and to providing new avenues of opportunity for America's young people.

Two months ago today, I gave my first testimony as a U.S. Senator on this legislation. I said then, and I say today, that we must provide the leadership that only the Federal Government can give.

National and community service is a movement that's growing and gaining support across America and across the political spectrum. Community service programs that ask and engage young people in the hard work of citizenship are emerging at the grassroots level in communities throughout our Nation.

In Maryland, the Maryland Conservation Corps and the Montgomery County Conservation and Service Corps are models that this act can replicate.

In Utah, service and conservation corps offer a proven vehicle to transform troubled youth into productive youth.

In New York and Vermont, promising initiatives in service-learning, youth corps, college-based service and intergenerational programs provide a base on which the National and Community Service Act can build.

And, in my State of Pennsylvania, we've proven that the return on our investment in service programs can be enormous. For almost 4 years, I chaired an effort we called PennSERVE: The Governor's Office of Citizen Service, which has sought to "ask and enable all Pennsylvanians to engage in community service."

Our experience with PennSERVE shows the vital link between the practice of citizen service and the preparation of a world-wide work force. Community service is the modern application of the oldest form of learning—learning by doing. And funding the National and Community Service Act can help others to see this connection. The seed money provided by this legislation can leverage other funds and revive other programs.

This summer in Pennsylvania, 2,000 young people will participate in the State's "Summer of Service," a youth corps program funded by the Job Training Partnership Act's summer youth employment and training funds, with a subsidy from the Pennsylvania Conservation Corps.

Based on last summer's experience, we're confident that participants will gain a full year of reading and math skills through the program.

Many of these young people will have experiences that are unique in their lives. Kids from the big city learning how to work together in the woods, to climb up a cliff and then repel back down. I've joined them going down those cliffs and let me tell you, these young people find out just what they're really capable of—and they never forget it.

Nationwide, we spend over $700 million in summer youth employment and training funds each year. The seed money this legislation provides will make these programs immeasurably more effective. Similar opportunities abound in our schools where community service provides multiple opportunities for making education more relevant, more exciting and more productive.

Pennsylvania's literacy corps illustrates this point. This State-funded program supports corps on 16 college campuses and provides technical assistance to another 14 corps funded by the Federal Literacy Corps Program. Through these efforts, more than 1,000 students have served in literacy programs and more than 2,500 Pennsylva-

nians have received tutoring. Similar private sector efforts such as Campus Compact and Campus Outreach Opportunity League, offer other opportunities to build effective partnerships between higher education, students, and their community.

The National and Community Service Act will do more than add names to America's roster of volunteers. It will change the way in which we perceive and treat our young people.

Mr. President, one thing I discovered when I helped found the Peace Corps 30 years ago is that Americans want to serve, to give of themselves and make not only our country, but the world, a better place. All we have to do is ask. Because by making that word "ask" into a strong and active verb, we tap into a reservoir of energy and commitment which knows no limits.

And make no mistake about it, we'll need every bit of that energy and commitment to overcome the challenges our society now faces and to prepare all of our young people to be productive workers in our economy and active citizens of our democracy. There is nothing more important we can do than to keep fighting until we take action to save another generation of disadvantaged young people from dropping out of school into a new cycle of joblessness, drugs, prison, and welfare.

It's a shame and a sin that a society with children who need care, roads that need repair, bridges that need building is paying able men and women to sit idle. They deserve the dignity of a job, and the taxpayers deserve a day's work for a day's pay. And effective citizen service programs are one way we can begin making it happen.

I believe that it's time again to ask all our young people to serve their country and their community. To serve, not be served—in the military service or the Peace Corps or a 100 local service corps where they can serve, earn, and learn, as millions of young Americans once did in the Civilian Conservation Corps—a program which lifted an earlier generation of young Americans up by their own bootstraps.

Our future lies in teaching our young people to do the hard work of freedom, the hard work of citizenship right here at home as well as abroad. This legislation moves us another important step toward that future.

RELOCATION OF ST. PETERSBURG VA REGIONAL OFFICE

Mr. GRAHAM. Mr. President, I would like to reiterate my support for the bill which the distinguished Senator from Maryland has developed providing funds for HUD, the VA, and various independent agencies.

I am particularly pleased that the Appropriations Committee has recommended an increase in the medical care account for veterans. This bill includes $13.5 billion for veterans' medical care, an amount higher than both the President's request and the House recommended level.

I appreciate the committee's recognition of two ongoing projects of critical importance to Flordia veterans—the construction of a long-term psychiatric unit and the expansion of a spinal cord injury unit. Both of these projects have been unnecessarily delayed by the VA, and the committee has appropriately encouraged the VA to move ahead with the next phase of construction.

I am concerned however, that the committee did not include funds for a project included in both the President's budget request and the House's appropriation measure allowing for the relocation of the VA Regional Office in St. Petersburg, FL.

Currently, VA benefits claims and appeals are made through this facility in downtown St. Petersburg. With the huge number of veterans in Florida, nearly 1.5 million, the workload has outgrown the capacities of the building. The building is not structurally capable of supporting the number of people and the huge amount of paperwork required to keep up with the benefits claims of Florida veterans.

The building has also had a history of other problems such as fire and safety deficiencies, asbestos, roof leakage, and rodent infestation.

In 1988 the VA was cited by OSHA for excessive floor loading due to files and bulk storage maintenance. As a means of resolving the OSHA citation, loan guaranty file cabinets, bulk publications, and general storage was moved to a remote warehouse not easily accessible for use by benefits counselors.

The VA has suggested that the building be relocated to property currently owned by the Department on the campus of the Bay Pines VAMC. Not only would a move allow for more room to get the job done, but it will allow veterans the convenience of being able to visit health care professionals and benefits counselors at one location. Colocation will also be beneficial to the employees of both the health care facility and the regional office who often work together on veterans' cases.

According to Thomas A. Wagner, the director of the Administrative Support Staff of the Veterans Benefits Administration, the VA's own economic cost analysis shows colocations to be cost effective. The colocation proposal meets all the necessary requirements for VA approval of such projects.

Mr. President, I hope the committee will recognize the value of this colocation proposal. I understand that the committee has a very limited budget with which to work, but perhaps during conference this item can be revisited.

I ask unanimous consent that a letter of support for the project from the executive director of the State of Florida Department of Veterans' Affairs be included at this point in the RECORD.

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

STATE OF FLORIDA,
DEPARTMENT OF VETERANS' AFFAIRS,
St. Petersburg, FL, July 18, 1991.

Hon. BOB GRAHAM,
U.S. Senator,
Washington, DC.

DEAR SENATOR GRAHAM: Recently I learned that the Senate failed to include an appropriation of $24 million required to collocate the U.S. Department of Veterans Affairs (VA) St. Petersburg Regional Office (RO) with VAMC, Bay Pines.

Particularly distressing to me is the Committee assertion that relocation is not warranted at this time. This same negative view was accorded relocation of the Houston, TX RO.

To begin with, the projects proposed for Florida and Texas are not precisely comparable. Texas now has two ROs, while Florida has but one. To our knowledge, an additional requirement for office space is not the primary issue in the Texas proposal. In the Florida case, my understanding is that additional space is a principal justification for relocation of the St. Petersburg RO.

It has been well established that Florida RO workers handle larger caseloads per employee than anywhere else. This has obvious importance in terms of the quality of the adjudication of benefits available locally. This may help to explain the extraordinarily high number of cases forwarded to the Board of Veterans Appeals from Florida (one-third more cases than California, though its veteran population is nearly twice ours.)

Relocation of Florida's RO is our number one priority in the benefits arena. This is true because the RO can be a "choke point" for the entire array of veterans' benefits. We desperately need room for expansion to accommodate growth in the number of people who process claims in Florida. The obviously expensive alternative would be a second RO to accommodate Florida's burgeoning veteran population.

There are other strong arguments supporting collocation including improved interaction between "benefits" and "health care," but I'm sure the VA will advance those. If we can be of further assistance, please do not hesitate to call.

Respectfully,
EARL G. PECK, MGen., USAF (Ret.),
Executive Director.

SPACEHAB PROGRAM

Mr. HEFLIN. Mr. President, I would like to take a moment to enter into a short colloquy on a NASA program with the distinguished Senator from Utah [Mr. GARN].

As my colleague knows, the Spacehab Program represents a unique era of commercial development as the Government seeks new ways of fostering internationally competitive space business without directly supporting it. The Spacehab is a presssurized space module which augments the middeck volume of the shuttle for man-tended research in space. It fits in the shuttles cargo bay, quadrupling the experiment volume available in the pressurized area.

The Spacehab Program has been funded through a combination of equity and debt. Over $40 million has been raised in equity. A bank loan in-

volving a revolving credit line up to $64 million dollars has been secured through the Chase Manhattan Bank. Spacehab has a backlog of $250 million in orders and projected 1993 revenue of $80 million. NASA has a fixed price contract with Spacehab for two-thirds of the capability of the first six flights.

The NASA contract titled CMAM [Commercial Middeck Augmentation Module] provides that Spacehab accommodate experiments developed by NASA Centers for Commercial Development of Space and U.S. industry to develop commercial uses of space. Over 60 universities and 160 industry groups throughout the Nation participate in this NASA sponsored program.

In the past, Congress has supported efforts to further private sector interest in commercial space development and I hope this trend continues this year. I would therefore question my colleague as to whether one such program, Spacehab, has the full support and endorsement of the committee?

Mr. GARN. The Spacehab Program has the full support of both the House and Senate authorizing committees. Furthermore, Spacehab is supported by the administration and was included as a commercial space initiative in President Bush's report to the Congress.

Mr. HEFLIN. There have been some rumors that due to the fact that the committee recommended a $47 million reduction in funding for NASA commercial programs, and because the Spacehab Program was funded at $47 million, it was to be the target of this cut.

Mr. GARN. That is not true, the committee's recommendation was completely unbiased. It was not our intention to target any program for this cut.

Mr. HEFLIN. Mr. President, I would like to thank my colleague from Utah for clarifying this matter for me.

INTERNATIONAL TREATMENT FACILITIES AT SAN DIEGO

Mr. SEYMOUR. Senator CRANSTON and I wish to bring to the attention of our distinguished colleagues, Senators MIKULSKI and GARN, the need for continued funding of the international treatment facilities located along the border between the United States and Mexico at San Diego, CA. The United States, through the Environmental Protection Agency and the International Boundary and Water Commission, has spent nearly $57 million thus far on the planning and design of the treatment works which will ultimately rid the Tijuana River valley of raw sewage flows. Currently, the city of San Diego and the IBWC indicate that there are 13 million gallons of raw sewage flowing daily through the valley.

Mr. President, the administration requested $100 million for fiscal year 1992 to continue work on the treatment works at the border. Construction is expected to begin soon on the first section of the outfall pipe which will carry treated sewage from the international treatment plant to a deep ocean outfall. The remaining land outfall, the ocean outfall and the treatment plant are expected to be completed in late 1995 if Federal and local funding continues.

EPA and IBWC agree that $49 million is needed for fiscal year 1992 to complete the design of remaining land outfall and ocean outfall and begin their construction. Some of the funds will be used to complete the design of the treatment plant.

Senator CRANSTON and former Senator Pete Wilson have documented over the past 6 years the significant health risk caused by this intolerable pollution problem, and thanks to their work and the assistance of Senators MIKULSKI and GARN, funding has been provided to begin to address this very serious problem.

I would like to inquire of the chairman and ranking Republican if they would be inclined to continue to support funding for this solution to an international border sewage problem?

Ms. MIKULSKI. Senator, I understand your concerns and those of Senator CRANSTON regarding this matter. As you know from the record of the markup H.R. 2519, the subcommittee indicated that it does not earmark funds for water pollution control projects; however, I recognize that this project is distinct from others in that it is an international project, Mexican officials, the city of San Diego, EPA, and IBWC have all been working to solve this problem. I assure you that Senator CRANSTON'S and your request will be given every consideration during the committee of conference.

Mr. GARN. I concur in this evaluation.

Mr. SEYMOUR. I want to express my appreciation to the Senator from Maryland and the Senator from Utah for their assistance on this matter.

TOS COLLOQUY

Mr. DECONCINI. Mr. President, I note that the Senate report on the VA-HUD-Independent Agencies bill indicates that $5 million budgeted by NASA to pay for an extension of the option to purchase two transfer orbit stage [TOS] boosters has been deleted from the President's request. The language goes on to say that this deletion is without prejudice and that if NASA decides to procure the vehicle for a specified mission the committee will take a second look at the issue.

I would like to ask the distinguished chair of the subcommittee, Senator MIKULSI, if it is her understanding that the $5 million request was made pursuant to a contractual agreement with Orbital Sciences Corp. which benefited both NASA and the company. To be more specific, NASA secured a 2-year extension on the option period and a lower purchase price for two options it held for Orbital's TOS upper stage. In return, Orbital was to be paid $5 million in the 1992 budget to cover costs related to maintaining its production line inventory and support equipment. During that 2-year period, which expires December of this year, NASA could either choose to exercise one or both of the options at the lower price, or forfeit the opportunity and allow the extension period to run out. In either case, NASA had a contractual obligation to the company to pay the $5 million.

Ms. MIKULSKI. I agree with the Senator. The money was requested by NASA pursuant to a contractual obligation.

Mr. DECONCINI. I understand the extremely difficult budget pressures faced by the distinguished manager of the bill and want to congratulate her for her skill in crafting a measure that meets the most pressing needs of the constituencies funded by the bill yet manages to stay within a very tight budget allocation ceiling. However, I wonder if the Senator from Maryland would agree with me that the conferees should make a particular effort to provide the funding required to allow NASA to meet its contractual obligations in general and the TOS contract extension obligation in particular.

Ms. MIKULSKI. I can assure the Senator that this conferee will do her best to see that this issue is addressed in conference within the constraints imposed by a very difficult budget allocation. However, I would note that NASA will first need to identify a mission for this TOS upper stage before they exercise this option should the conferees restore this $5 million.

Mr. DECONCINI. I thank the distinguished Chair.

LEAD ABATEMENT

Mr. JEFFORDS. Mr. President, for much of the past year, I have been working with EPA and OSHA on jurisdictional differences between the two agencies related to lead abatement. Working with these two agencies, we were able to reach a compromise that reflected not only the agencies' concerns, but also labor and industry concerns. I thus would like to request of my colleague from Maryland some information about the intent and scope of the lead abatement section of the VA, HUD, and Independent Agencies' appropriation.

First, I note in the committee report that OSHA is to develop the regulations related to worker health and safety. Is that correct?

Ms. MIKULSKI. Yes.

Mr. JEFFORDS. How much money is to be allocated for the purpose of lead abatement, particularly for the regulatory promulgation?

Ms. MIKULSKI. The committee is recommending an increase for EPA totaling $4,750,000 for lead-based paint activities, including $3,000,000 to establish a national system for standardiz-

ing training and accreditation programs and $1,750,000 for grants for training workers.

I might add that we are also recommending increases in HUD not only for additional technical guidelines development for abatement activities, but are also providing for the establishment of a new Office of Lead Paint Abatement and Poisoning Prevention to provide for a policy focus for Department-wide lead-based paint abatement activities and to coordinate with other Federal efforts. Finally, the committee is recommending an appropriation of $75 million for a demonstration of lead-based paint abatement in privately owned housing in addition to the previously funded demonstrations in public housing and our ongoing abatement activities as part of the $3 billion public housing modernization program.

I would say to the Senator that with respect to the two major agencies under the subcommittee's jurisdiction: HUD and EPA, we have been very concerned over the public health menace of lead poisoning, and are making very forceful recommendations as to the aggressive role that these agencies must undertake to responsibly address this enormous problem.

Mr. JEFFORDS. How is OSHA to pay for this rulemaking since no money is appropriated to OSHA in this bill for this purpose?

Ms. MIKULSKI. OSHA of course is not in our subcommittee jurisdiction and therefore we could not make a direct appropriation for that agency. I would say, however, that to the extent that they also have statutory responsibilities to address worker safety issues, I would hope that their appropriations bill would adequately provide the resources to fulfill their mandates. In addition, to the extent that OSHA would be providing services for another agency such as EPA or HUD, an interagency agreement, including reimbursements of funds to OSHA is certainly administratively permissible. I would certainly support such an arrangement if it permitted more timely and effective Federal action on this tragic problem.

Mr. JEFFORDS. Second, I have spoken to OSHA about its regulatory strategy for lead. OSHA believes two rules are needed. The first is an interim rule that OSHA believes it can issue very rapidly. The second rule would be a final rule that would address the issue of lead levels in greater detail. OSHA does not believe it can address this more important issue comprehensively in a year. Is it the intent of the language in the bill to allow OSHA to quickly promulgate an interim rule to be followed by a final rule within some longer period of time?

Ms. MIKULSKI. How long would it take to do a final rule and what would be involved in the interim rule?

Mr. JEFFORDS. Approximately 2 years for the final rule. For the interim rule, I anticipate that OSHA would propose the industry standard to the construction industry. The current construction standard is badly out of date.

Ms. MIKULSKI. I believe that such a two-track legislative approach is appropriate. Again, it is critical that the responsible Federal agencies meaningfully address this crisis as expeditiously as possible. I might also add that there is lead-based paint abatement going on across the country as we speak. The need for standards is long overdue and OSHA must move immediately.

Mr. JEFFORDS. Could union apprenticeship programs qualify or partially qualify to meet the intent of the training programs?

Ms. MIKULSKI. Yes, that certainly seems appropriate. As I have said, the need to abate lead-based paint exposure is an enormous nationwide problem. We certainly must use all available means to provide the training necessary to accomplish this goal in a safe and effective manner, and as the Senator knows I am very supportive of union apprenticeship programs.

Mr. JEFFORDS. Accreditation of laboratories may be best handled by trade associations. For example, the American Industrial Hygiene Association is a nonprofit group that has effectively run accreditation programs. Is it the intent of this legislation to require EPA to look at having an outside contractor, association, or entity run the accreditation program?

Ms. MIKULSKI. In our hearings both with respect to our subcommittee and in other hearings on biomedical health issues, there have been very profound concerns raised over the adequacy of laboratory quality assurance and certification. With respect to lead-based paint, since many of the testing procedures are relatively new, we have received reports of problems in accurate analysis in previously certified labs. I must therefore reserve judgment on this issue until a more thorough assessment of these concerns is completed. I will say, however, that nothing in the bill prohibits EPA from utilizing the services of an outside contractor.

Mr. JEFFORDS. Reciprocity in certification should be encouraged, as one of the main complaints I have heard about the asbestos program is that contractors must get recertified in each state needlessly increasing the cost of abatement projects.

Ms. MIKULSKI. Yes, EPA would be directed to encourage reciprocity of certification.

FUNDING FOR THE ADVANCED BUILDING TECHNOLOGY PROGRAM

Mr. LIEBERMAN. I want to commend the Senator from Maryland for the fine work she has done in putting together this most important legislation. I wonder if I might ask my friend from Maryland a question about a program of particular importance to me: the Advanced Building Technology Council, authorized last year in section 952(b) the Affordable Housing Act.

The Council, which is a voluntary program for participation by both the private sector and Federal construction agencies, will provide the Federal Government with access to cost-cutting new building technologies. It will promote new building techniques that result in cheaper and more energy efficient structures by evaluating and recommending, as well as assuring certain guarantees for, promising innovations for use in Federal buildings and other structures built with Federal funds. Federal agencies are required to consider and utilize, where appropriate these technologies.

I note that no specific funding is provided for the Council in this appropriations bill, I ask the chairman to consider providing funds for the Council in conference.

Ms. MIKULSKI. I want to thank my friend for his kind remarks, I want to assure him that I will give full consideration to providing funding for the Council in conference.

Mr. LIEBERMAN. I thank my colleague for her support and again commend her for the excellent work being done by her and her fine staff.

Mr. BOND. Mr. President, I am concerned whether the bill before us provides sufficient funding for the section 8 property disposition program, the program that facilitates the sale of foreclosed multifamily properties.

The bill appropriates funds for 2,858 section 8 certificates—the same number as the House. Yet, the congressional justifications for fiscal year 1992 shows a real leap in the HUD-owned inventory—23,563 units are estimated to be HUD-owned properties.

The adequacy of funding for the property disposition program is of particular concern in my State. The report I referred to earlier shows over 4,000 units that are either HUD-owned, in foreclosure or recommended for foreclosure in my State. Many of these are in St. Louis. I would also ask the chairman of the subcommittee to take a closer look at the level of need, in consultation with the Department, during conference deliberations. I do not think that it would be a good result to have HUD as a long-term owner of this housing, which may occur if the the number of units are too few.

Ms. MIKULSKI. I assure the Senator from Missouri that a full review of the need for property disposition subsidies will be conducted prior to the completion of conference.

SMUGGLER MOUNTAIN SUPERFUND SITE

Mr. WIRTH. Mr. President, as the manager of this bill may know, we have a rather unusual problem with a Superfund site in Pitkin County, CO. The Smuggler Mountain Superfund site

is located in the heart of a middle-class residential community in Aspen. The Environmental Protection Agency has determined that the soil in the Smuggler Mountain neighborhood has high levels of lead and other heavy metals. As a result, in carrying out its legal responsibilities under the Superfund law, the Environmental Protection Agency has developed a plan for cleaning up that Superfund site.

But, Mr. President, that plan has sparked tremendous controversy among the people who live in Smuggler Mountain. They have some real questions about whether the mine tailings—which are covered by soil and gardens and homes in many places—pose a threat to their health, at least so long as the soil remains undisturbed. More important, they are very, very concerned that the bulldozers and back-hoes and other equipment that will have to be used to dig up the mine tailings will mobilize these heavy metals and directly increase the health risks to the people who live in this neighborhood.

I want to emphasize to the Senator from Maryland, the manager of this bill, that I am not criticizing the EPA. They have a job to do, and they are doing it in good faith. But I do have to emphasize that the people of Aspen and Pitkin Counties are virtually unanimous in their concern about whether some critical elements of EPA's remediation plan are necessary and appropriate, and whether the cleanup plan will actually increase risks to their health.

As a result, I recently wrote to the EPA to suggest that they take a second look at the cleanup plan. To be specific, I suggested that EPA adopt an interim remediation plan for this summer's construction season. That interim plan is based on the fact that there are a number of remediation measures that are not controversial. For example, there is wide agreement that some gravel and dirt roads should be paved, and that a great deal of signing and education needs to be done. Those measures could be implemented. But the controversial proposals, which involve significant soil disturbance, would be deferred for a season.

The second element of my proposal is that during this interim period, the Environmental Protection Agency would request an independent entity to take a look at the health risks that exist at Smuggler Mountain, and the health risks that would be created during the cleanup. The independent agency would then be in a position to make recommendations to the EPA about the appropriate scope of remediation at this site. I suggested to the EPA that the Agency for Toxic Substances and Disease Registry of the Centers for Disease Control would be viewed as independent and objective by everyone concerned.

At the risk of belaboring the point, I want to emphasize again that the uncertainties about the health risks posed by these buried mine tailings have galvanized the community. In all my years as a Member of Congress, I do not believe I have ever seen a community as united as the people of Aspen are over this issue. They simply will not let the cleanup begin unless, and until, we can convince them that the plan makes sense—that it is needed to protect their health—or as they would state it, that it won't jeopardize their health.

Unless we find a way to answer these citizens' questions, the cleanup plan for Smuggler Mountain will bog down deeper and deeper in controversy. That is not in the best interest of either EPA or Pitkin County.

But fortunately, while this issue has stirred tremendous controversy in Pitkin County, my proposal has been met with wide acceptance by members of the community and the leaders of the city of Aspen and Pitkin County. I believe it is a fair way to resolve the outstanding questions that so concern the residents of Smuggler Mountain.

That is why I am here this evening, Mr. President. We have discussed this matter in some detail, and I want to confirm our understanding that within the funds appropriated to the Environmental Protection Agency by this bill, the Agency for Toxic Substances and Disease Registry is to perform an independent assessment of the health risks at the Smuggler Mountain Superfund site in Colorado.

Is that also the understanding of the distinguished subcommittee chairman?

Ms. MIKULSKI. The Senator from Colorado is correct. I believe it is appropriate for the ATSDR to perform an assessment of the health risks of various options for the Smuggler Mountain remediation. This site is located in the center of a densely populated neighborhood, and it would be impossible to take in heavy equipment without a great deal of disruption. And I can certainly understand why the local residents would be concerned about whether the soil disturbance would increase the health risks to adults and children in the neighborhood.

Mr. WIRTH. I thank the distinguished Senator and manager of the bill.

CRAF

Mr. FOWLER. Mr. President, I would like to address a question to the distinguished Chair of the Subcommittee on VA, HUD, and Independent Agencies, the Senator from Maryland. I would like to briefly discuss a portion of the NASA Space Science Program which is of particular interest to me: The Comet rendezvous asteroid flyby [CRAF] mission.

But before discussing CRAF, I wish to thank the chair for her diligence and leadership in producing an fiscal year 1992 NASA appropriations bill which is balanced, viable, and affordable in the very difficult budgetary environment she had to work in. In particular, I am very pleased that the Senator from Maryland managed to produce a bill which repairs most of the damage to NASA's Space Science Programs that would have resulted from the imposition of an across-the-board freeze.

The major exception to this is in the proposed termination of the amendment portion of what Congress authorized in fiscal year 1990 as the combined CRAF/Cassini missions. It is my understanding that the Appropriations Committee came to this decision reluctantly, and based solely upon the severe financial constraints placed upon the VA, HUD, and Independent Agencies bill.

Ms. MIKULSKI. The Senator from Georgia is correct. I know of his longstanding, strong support for both the CRAF and Cassini missions, and I share his evaluation of the scientific value offered by both of these projects. The decision to terminate CRAF was, as he stated, a reluctant one based on the level of funding available for NASA within the committee's 602(b) budget allocation this year and what is likely to be available next year.

Mr. FOWLER. I thank the chair. I would like to further inquire of the Senator from Maryland whether, given that the other body has adopted an appropriations bill which assumes a continuation of the combined CRAF/Cassini mission albeit at an unrealistically low fiscal year 1991 spending level, she anticipates that the future of the CRAF mission will be an item for conference, and further that if sufficient resources can be fond, she could support a continuation of CRAF?

Ms. MIKULSKI. I do believe that the status of CRAF will indeed be an issue for conference. If the conferees can produce sufficient resources to fund a combined CRAF/Cassini mission without comprising the viability of the space station, EOS, AXAF, and shuttle programs as provided for in the Senate reported bill, then the Senator from Maryland woud be pleased to support a continuation of CRAF.

Mr. FOWLER. Asking the chair's indulgence for one last question, if a decision is made in conference to continue the combined CRAF/Cassini Mission, would it be the Senator from Maryland's expectation that the provision in the Senate bill which lowers the total cost cap from $1.6 billion to $1.3 billion would need to be modified accordingly?

Ms. MIKULSKI. The Senator from Georgia is correct. The recommendation for a $1.3 billion cap is contingent on termination of the CRAF component of the CRAF/Cassini mission.

Mr. FOWLER. I thank the Chair for her comments.

49-059 O—95 Vol. 137 (Pt. 13) 34

THE COMET RENDEZVOUS ASTROID FLYBY MISSION [CRAF]

Mr. FOWLER. Mr. President, at the outset, let me again thank the distinguished Chair of the VA, HUD, Independent Agencies Subcommittee, on which I have the honor to serve, for the excellent job she has done in putting together a well-balanced appropriations bill under the most difficult of circumstances. While my remarks will be confined to a narrow portion of one section of the bill, namely space science, this point holds true across the wide range of agencies and programs funded by the bill.

In the area of space science, the Senate committee bill is a significant improvement over the freeze voted by the House, providing almost $250 million more in fiscal year 1992 funding. This additional spending will allow the Advanced X-Ray Astrophysics Facility [AXAF], the Cassini mission to Saturn, and the Earth Observing System [EOS], all of which are high-priority science projects, and all of which would have been threatened by a freeze level, to continue forward, albeit at the slightly reduced pace.

The Senate committee bill also provides far more funding for the less glamorous but equally important little science programs such as the suborbital and Explorer Programs, and the vital categories of mission operations and data analysis.

Indeed, with one significant exception which I am about to highlight, the work of Senator MIKULSKI has produced a sound, scientifically valuable, and under the fiscal circumstances, affordable space science program.

However, as one who has had a longtime interest in space science, reaching back at least to when I served as chairman of the Space Science Task Force of the Congressional Space Caucus in the mid-1980's, I am compelled to speak up about the one major omission in the Appropriations Committee's space science program: the comet rendezvous asteroid flyby mission.

In focusing on space science I have virtually no constituent interest to represent. My State is well below average in overall NASA spending, and as far as I can tell there will be no impact in Georgia whether or not CRAF, or for that matter Cassini, is ever flown. I say this not to denegrate the importance of constituent representation, for indeed I believe that is one of our most important roles as elected representatives, but to indicate that I have no ulterior motives or hidden agenda in promoting a vigorous space science program.

Indeed, if I seek to represent anyone in this matter, it is our children, and their children. These space science programs are rather unique in that they almost always involve decisions to bear the cost of programs by elected officials who may well not be around when the benefits of their actions materialize. Thus the Presidents and many Members of Congress who provided the resources to get us to the Moon were not in office when Neil Armstrong set foot upon the Sea of Tranquility. And many of us who marveled at, and accepted credit for the wonderous performance of the *Voyager* spacecraft had not been here when these missions were authorized and funded. In the case of CRAF, if we do decide to continue this program, it will be well into the first decade of the 21st century before the major benefits arrive.

Many of us in this body, including this Senator, have been critical of the short time horizon used by too many American corporate executives in determining their corporate strategies. I still share that view, but unfortunately, the same can be said for Federal decisionmakers, on both sides of Pennsylvania Avenue, on all too may issues, from education, to environmental protection, to deficit reduction, to scientific research and development.

All of this brings me back to CRAF, the one major NASA casualty in the Senate appropriations bill. It is somewhat ironic to me that this particular mission, which was the first of our space science programs designed from the outset with cost limitations in mind, is now targeted to be the principal sacrifice to the overall problems with the NASA budget.

Beginning in the middle 1970's the declining planetary science budget and the demands for more sophisticated and more expensive missions led to less frequent planetary mission starts, with no American solar system exploration spacecraft launched between 1977 and 1989. The smaller number of new missions has reduced program balance, eroded the research base, and increased individual mission costs.

In 1980, to address the problems in the United States planetary exploration program, NASA, with the full support of Congress, formed the Solar System Exploration Committee [SSEC] to devise a new approach to the exploration of the solar system which would recognize the root causes of the problem, build upon the science rationale and the strategies of the Space Science Board and NASA working groups, and result in specific, prioritized recommendations to NASA.

To some acclaim in Congress and in the executive branch, in 1983 the SSEC presented its report to the Congress and the American people that sought to identify an affordable, long-term balanced mission strategy for the exploration of the solar system. The SSEC report recommended that a balanced core program of high priority science missions of low to moderate cost be implemented, with missions to the three areas of the terrestrial planets, the small bodies—asteroids and comets, and the outer planets.

Since the release of that report the Congress has authorized all of the elements of the SSEC core program: The Magellan mission to Venus; the Mars Observer; the Cassini mission to Saturn; and CRAF. Now, remember that this core program was designed as a minimum program to maintain American preeminence in planetary exploration, and to get down to this minimum the SSEC imposed economizing measures, such as commonality in mission components, as well as relegated dozens of other scientifically worthy solar system exploration missions to lower priority status which would be funded only if sufficient resources could be found.

In continuing to implement the SSEC core program, the Congress authorized the CRAF and Cassini missions as a combined program in 1989. This combination of the mission was very much in keeping with the spirit of SSEC in its aim of further minimizing costs by maximizing mission commonality. The success of this approach can be seen in the current estimates for the costs of the combined program, set at $1.6 billion, versus the costs of carrying out either mission separately, estimated at between $1.3 and $1.4 billion.

In initiating the program, the Congress took the further cost-conscious step of statutorily imposing a total mission cost cap of $1.6 billion, with strong directions to NASA mandating reduction in the missions' scope, if necessary, to stay within that total.

Once again, the CRAF mission has taken the lead in cost reduction, this time by significant descoping from the original mission plan in dropping both the Penetrator/Lander and the Scanning Electron Microscope/Particle Analyzer.

The comet rendezvous asteroid flyby now stands as the lone part of the SSEC core program which may not go forward. CRAF has been through a very long, and exhaustive development process. The announcement of opportunity for participation in CRAF was issued in July 1985, proposals were submitted in November 1985, investigations were selected in October 1986, and advanced development of most of the scientific instruments and the spacecraft has been underway for a number of years. As I mentioned earlier, it was authorized for a new start in 1989.

Substantively, CRAF represents a particularly high priority in that it would initiate American exploration of the chemically and physically primitive small bodies of the solar system. It provides an opportunity to explore at close hand some of the solar system's primitive bodies, and to obtain fundamental new knowledge about the origin and evolution of the solar system, the origin of life, and astrophysical dynamical processes. It also represents demonstration of the technique of ren-

dezvous with a deep space object, a technique of widespread potential application in future missions to near-Earth asteroids, for example.

CRAF has been strongly endorsed by all relevant advisory committees of the National Academy of Sciences and NASA, including the report from Dr. Sally K. Ride, entitled "Leadership and America's Future in Space"; and by the Augustine Panel which fully backed NASA's current strategic plan for space science and applications of which CRAF is an integral part.

Canceling CRAF now may provide some short term budgetary savings, through that is not absolutely clear to this Senator, because of the loss of the propulsion system to have been provided by the Federal Republic of Germany for CRAF. And, if one assumes that we will never want to replace CRAF with another solar system exploration mission at any point in the future, then indeed there will be permanent savings from cutting CRAF. But the replacement costs for adding another solar system mission will almost certainly far exceed the $300 to $400 million, plus launch and operational costs, that a CRAF/Cassini versus a Cassini-only mission will cost.

The United States Space Science Program has produced great benefits to American taxpayers and to the people of the world at little cost, at least as related to other Federal expenditures. However, declining space science budgets in the seventies and early eighties, the increasing costs of cutting edge missions, and the *Challenger* disaster have combined to impede American progress in space science. Congressional support for such missions as the Hubble Space Telescope, the Magellan mission to Venus, and the Ulysses mission to study the Sun has revitalized the American program, and when they and other projects are launched, we will have reasserted our international leadership in the field. To keep up that momentum will require a continuing commitment to a balanced NASA program in which space science receives an equitable share.

CRAF is a high-priority science mission which has repeatedly passed the test of peer and advisory body reviews, which has been developed over a long period of time always with an eye toward cost limitation, and whose cancellation would provide minimal savings.

To further the goal of ensuring both a balanced American space program and a leadership role for American space science, I strongly support the continuation of the comet rendezvous asteroid flyby, and I will do all that I can in the upcoming conference on the VA, HUD, independent agencies fiscal year 1992 appropriations bill to restore that program.

EPA'S CLEAN AIR SMALL BUSINESS TECHNICAL COMPLIANCE ASSISTANCE PROGRAM

Mr. KASTEN. Mr. President, I had intended to offer an amendment to provide $2.6 million in additional funding for the Environmental Protection Agency's Clean Air Small Business Technical Compliance Assistance Program.

By adopting this amendment the Senate would have followed through on a commitment it made last year to this Nation's small businesses when it passed the Clean Air Act.

Recognizing that small business owners would need additional help in complying with the new clean air law, Congress established the Small Business Technical Compliance Assistance Program. Under the program, the States are required to establish technical assistance centers to help small business owners comply with the law. EPA was made responsible for overseeing the establishment of these State programs and for monitoring their operations.

EPA is making progress in implementing the program. It is currently finalizing guidelines to outline Federal and State roles in setting up the program. Unfortunately, the administration did not include any funding in its fiscal year 1992 budget request to help the States set up this program.

Along with the chairman and ranking member of the House Small Business Committee, Senator BUMPERS and I expressed our concern about this oversight in a letter earlier this year to EPA Administrator Reilly. In response, EPA noted the hard budget choices it has had to make in allocating funds to implement the new clean air law.

I certainly recognize these fiscal difficulties, but I am also all too aware of the fiscal difficulties many of the States are currently facing. If we fail to provide any money for grants to help set up this program, I am concerned that the States will be unable to set up the Compliance Assistance Program.

At this time I would like to enter in to a colloquy with the chairwoman and the ranking member of the Subcommittee on VA-HUD Appropriations. Could the distinguished Senator from Maryland inform the Senate of the proposed appropriations level for this program in both the House and Senate bill?

Ms. MIKULSKI. The House-passed bill allotted $4 million for the program to be made available for grants to the States, including $200,000 for the national EPA office for advisory support. As reported by the Appropriations Committee, the Senate bill has allotted $1.4 million for the program.

As a member of the Small Business Committee, I support the Small Business Compliance Program. However, our subcommittee was unable to match the House level because of limited funds.

Mr. KASTEN. The Compliance Assistance Program, supported by both the business and environmental communities, is an important ingredient in ensuring the viability of our Nation's small businesses. These owners are depending on the successful implementation of the Small Source Compliance Assistance Program.

I respectfully request that the chairwoman and ranking member work in conference to match the House level of $4 million.

Ms. MIKULSKI. I can assure the Senator from Wisconsin that I will do my best to achieve the House amount for this program in conference.

Mr. GARN. Mr. President, I too would like to reassure the ranking member of the Small Business Committee that I will support efforts to fund this program at the $4 million level appropriated in the House bill.

Mr. KASTEN. Small business owners in Wisconsin and throughout the country care about the environment and want to do their fair share to clean up this country's air. However, as we recognized last year they will need some help. The types of businesses expected to be covered by clean air regulations such as auto body shops, dry cleaners, and bakeries do not have and cannot afford technical experts or permit specialists on staff to comprehend fully the ramifications of these new regulations.

I thank the Senator from Maryland and the Senator from Utah for their cooperation. I yield the floor.

AVONDALE SEWAGE TREATMENT PROJECT

Mr. DeCONCINI. I wonder if I may engage the distinguished chairman in a colloquy concerning the Avondale sewage treatment project?

Ms. MIKULSKI. I will gladly yield to the senior Senator from Arizona.

Mr. DECONCINI. I would like to inquire about a matter which I brought to the committee's attention during its consideration of the fiscal year 1992 bill. As I indicated to chairman previously, the State of Arizona Department of Environmental Quality has designated the wastewater treatment plant and connecting sewer interceptor system planned and under constuction by the city of Avondale as Nos. 2 and 6, respectively, on its construction grants priority list.

Mr. President, because of the significant environmental and health problems identified by State and Federal authorities, I recently visited this area to view firsthand these problems that the city of Avondale is working so diligently to deal with.

Mr. President, I saw firsthand the problems facing this rural Arizona community simply because they cannot afford to pay for the cost of the sewer system. The average income of the citizens who live in these working-

class neighborhoods is $4,000 per year. Over 87 percent of the existing septic systems have failed and many of the homes have open cesspools in their backyard. Eventually, if these homes cannot be connected to a modern wastewater treatment system, the department of environmental quality will be forced to red tag or close these homes for environmental reasons forcing these Arizonans to vacate their residences.

Mr. President, the city of Avondale has no choice but to build a new wastewater treatment plant. State officials have notified the city that the existing treatment plant does not meet existing State requirements for discharge and cannot be modified to do so. The city has been working closely with the State and Federal authorities to address this situation.

I wonder if the chairman can apprise me of how the fiscal year 1992 bill responds to situations such as the one Avondale finds itself in.

Ms. MIKULSKI. I thank the Senator from Arizona for raising this issue. I am also very concerned about the fact that reduced Federal funds will deprive the low-income citizens of both Arizona and Maryland the opportunity to have a reasonably priced water and sewer system which will provide them with the basic health and environmental standards that all citizens of this Nation deserve.

The Senator from Arizona has convinced the committee of the merits of the situation in Avondale. However, it is the committee position that construction grant funds should not be earmarked for special projects. Such earmarks lessen the total amount available to other projects which vie for funds on a competitive basis. In keeping with this policy, we did not include any constuction grant earmarks in the fiscal year 1992 bill.

Because of the compelling case that the Senator from Arizona has made on behalf of the Avondale project, the committee has included an additional $500 million for the construction grant program above the President's budget request. This will include an additional $6 million for the State Revolving Loan Program in Arizona for the express purpose of addressing such critical problems as the one you have identified. I urge you to work with both the State and city officials to ensure that these additional funds are used to address needs such as those of the city of Avondale.

Mr. DECONCINI. I thank the chairman for her consideration and support and I will continue to work with the State and local officials to ensure that the critical needs of the city of Avondale are dealt with in a manner that will allow them to keep their homes and have an affordable water treatment and sewer system that provides environmentally sound and sanitary living conditions.

PUGET SOUND WATER QUALITY

Mr. ADAMS. Mr. President, the Puget Sound water quality management plan and the city of Seattle's secondary sewage treatment facility plans are of vital importance to the environmental quality and quality of life in the Puget Sound area. I had asked the committee to provide $10.5 million in fiscal year 1992 to match the local funds for the Puget Sound water quality management plan, and I had asked the committee to approve the Presidents' budget request target of $35 million to enable the city of Seattle to construct secondary sewage treatment facilities, as in the House bill.

I appreciate the committee's position with respect to the earmarking of funds for such special projects. I would like to ask the chairperson if I may therefore have her commitment to work to assure these levels of funding for these projects when the bill reaches conference.

Ms. MIKULSKI. I appreciate the Senator's understanding of the committee's position on this matter, and assure the Senator that I will work with him in conference to obtain funding for the Puget Sound water quality management plan and the city of Seattle's secondary sewage treatment facility.

Mr. ADAMS. I thank the Senator.

CONSTRUCTION GRANTS/STATE REVOLVING FUND

Mr. D'AMATO. Mr. President, I would like to confirm with Senator MIKULSKI and Senator GARN, the managers of the bill, my understanding about the eligibility of money for the construction of secondary sewage treatment facilities in New York City.

My concern is about the lack of an earmark targeting a specific amount for New York City, though the money for these projects is available under the Senate bill. It is my understanding that under the bill the House approved the Bush administration's request of $300,000,000 for sewage treatment facilities broken down into the following amounts: Boston, $100,000,000; New York, $70,000,000; Los Angeles, $55,000,000; San Diego, $40,000,000; and Seattle, $35,000,000.

Currently, these five cities have some of the most important, yet most polluted coastal waters in the Nation. Under court order these cities must take immediate steps to reach full secondary treatment as required under the Clean Water Act. To comply, New York City, and the others, must now spend billions of dollars to meet tight construction schedules at a time when municipal budgets are extremely tight.

The swift completion of secondary sewage treatment facilities is critical to avoid an environmental nightmare that has plagued New York City in recent years: The washing up on our beaches of massive amounts of garbage from overflowing sewage systems. Would my colleagues agree that the cleaning up of our coastal waters will remain a priority of this Congress and do they support New York State's program funding level of $70,000,000?

Mr. GARN. Let me respond to my colleague by associating myself with the Senator from New York's remarks on the importance of providing the funds for the secondary sewage treatment facilities. This Senate subcommittee has traditionally refrained from giving explicit earmarks to this type of construction grant. However, this Senator assures the Senator from New York that I will do all I can to give his concerns complete consideration during the House-Senate conference.

Ms. MIKULSKI. I just want to join with my colleague Senator GARN to do what I can to give Senator D'AMATO's concerns adequate consideration when we move to House-Senate conference.

Mr. D'AMATO. I appreciate the comments made by my friends Senators MIKULSKI and GARN. I thank them for addressing my concerns and for their support for funding of this important program.

OFFICE OF POLLUTION PREVENTION

Mr. CHAFEE. Would the distinguished manager of this bill, Senator MIKULSKI, yield for a brief colloquy? H.R. 2519, the VA-HUD appropriations bill, directs the Administrator of the Environmental Protection Agency to move the Office of Pollution Prevention into the Office of the Administrator. EPA, as part of a reorganization, is currently considering moving this Office from its current location in the Office of Policy, Planning and Evaluation, to some other location where it can better accomplish its mission. It is my understanding that the Senator from Maryland is willing to reconsider this provision during the House/Senate conference on H.R. 2519.

Ms. MIKULSKI. I would say to the Senator from Rhode Island that when this provision is considered in the House/Senate conference, I will again consider the provision which locates the Office of Pollution Prevention in the Office of the Administrator. I will do so with a view toward ensuring that the Office is located in the best place possible to most effectively promote its multimedia emphasis and achieve its long-term goals. EPA has indicated a desire to meet on this issue prior to conference. I thank the ranking Republican member of the Committee on Environment and Public Works, the Senator from Rhode Island.

PRESERVATION OF FEDERALLY ASSISTED HOUSING

Mr. CRANSTON. Mr. President, I would like to engage the Senator from Maryland in a colloquy on HUD's implementation of the Housing Preservation Program established by title VI of the National Affordable Housing Act.

One of the most significant challenges facing the Congress is to preserve the affordability of hundreds of thousands of older subsidized housing units that are threatened with conversion to market-rate housing through mortgage prepayments and other methods of terminating low-income affordability restrictions.

Title II of the Housing and Community Development Act of 1987 provided a temporary, interim solution to the problem that was designed to give Congress the breathing room to consider and act upon the research and recommendations then being developed by several private sector task forces.

The breathing room created by the 1987 act was well used. From countless hearings, task force reports and intense negotiations emerged title VI of the National Affordable Housing Act, a permanent preservation solution that balances the interests of the owners, the tenants and the communities in which the housing is located. The preservation solution places prime emphasis on the need to retain the affordable housing inventory for its remaining useful life and, in my strong opinion, is, by far, the most cost-effective strategy available to the Federal Government for addressing the potential loss of this vital inventory.

The bill before us would provide $718 million to fund the permanent title VI program—as well as the title II program on a transitional basis. I commend the Senator from Maryland for her strong and unwavering commitment to carry out these preservation initiatives.

I have two major concerns, however, as HUD proceeds to implement the preservation mandate. The first concern is that the Department appears unwilling to follow the clear legislative intent of Congress in its promulgation of preservation regulations.

In early April, the House and Senate Housing Subcommittees received the Department's proposed preservation regulations. After careful review and deliberation, House Chairman HENRY GONZALEZ, House ranking member MARGE ROUKEMA and I, as chairman of the Senate Housing Subcommittee, concluded that such regulations deviated sharply from congressional intent in a number of key programmatic areas. A lengthy letter was sent to Secretary Kemp on April 22 detailing our concerns.

As the April 22 letter states, "the regulations—do not—reflect congressional intent in a number of very important provisions which are central to the preservation program." Two examples of regulatory departures are instructive:

Unwarranted emphasis on resident homeownership: The proposed regulations devise a sales process heavily biased towards resident homeownership. Under the regulations, for example, resident councils are the only entities that can achieve site control during the first year of the marketing period with all other priority purchasers put on hold until the very end of this 12 month period. Yet, resident councils pursuing the homeownership option are the only purchasing entities that have the opportunity to terminate affordability restrictions.

This favored treatment of resident councils runs directly contrary to the legislative history. One alternative clearly considered and rejected during the legislative process was the Administration proposal to confer "a right of first option" on resident councils seeking to acquire at-risk housing under the HOPE homeownership model. Instead, Congress created an entire class of preferred buyers ("priority purchasers") in the final legislation, of which resident councils are only one. Continued use of property as affordable rental housing for very low, low and moderate income persons is the primary objective of Title VI. The resident council homeownership option was included as a concession to the HUD Secretary based on a projection that only a small percentage of the units would be sold under this special program. The Department's proposed regulations evidence a retreat to the Secretary's earlier proposal, which cannot be countenanced in light of the legislative history and statutory language.

An unworkable sale process: The proposed regulations severely undermine the sale process established by the 1990 legislation. HUD has established onerous earnest money deposits, undercut the insured financing program, restricted the rights of priority purchasers with respect to certain financial inducements and, as described above, placed all non resident councils at a significant disadvantage. The combination of these factors, among others, will discourage owners who want to sell from participating in the sale program, thereby undermining owner choice, and make it very difficult for nonprofits (including residents seeking to acquire properties for rental purposes) and other priority buyers to acquire at-risk properties.

That result was clearly not intended by the 1990 legislation. The permanent preservation program—unlike the emergency 1987 measure—delineates a structured process for transferring the assisted inventory to new ownership. The process contains substantial risks; owners seeking to transfer their housing are allowed to prepay if no qualified purchaser makes a bona fide offer within the applicable time periods. Given the specter of prepayment and loss of affordable hosuing, the 1990 housing conferees fully expected the Department to establish by regulation and practice a workable transfer process.

Given these and other concerns, the April 22 letter directed the Department to "make those changes * * * necessary to bring the preservation regulations into conformity with congressional intent."

On May 22, 1991, the Department responded by letter to the concerns raised by congressional Members. The Department's response, also attached to the end of the colloquy, includes a strong defense of the favorable treatment provided resident councils seeking homeownership in the proposed regulations—indicating that the Department is unlikely to revise the regulations to conform with legislative intent. The Department's position, if accepted, could undermine the statute's prime objective of preserving the affordability of the federally assisted inventory for the long term. As described above, resident councils pursuing the homeownership option are the only purchasing entities permitted to terminate the existing affordability restrictions.

I am deeply troubled by the Department's approach to these important issues. I believe, however, that it is premature to act before the final regulations are issued. Since public comments were due by July 1, issuance should occur prior to the conclusion of the appropriations conference. If the Department fails to conform the regulations to legislative intent, in all respects, I have every intention of asking my distinguished colleague from Maryland for her assistance in conference on this matter.

Ms. MIKULSKI. I share the concerns raised by the Senator from California and concur with his interpretation of the legislative intent underlying the title VI preservation program. The Senator and many others worked long and hard on devising a preservation solution that is fair to owners, fair to tenants, preserves the housing and is budgetarily sound.

That solution is now subject to significant revision in the regulatory process—contrary to all accepted notions of the appropriate relation between the legislative and executive branches. I strongly urge the Department to respect the legislative intent of Congress and revise their regulations to conform to that intent.

Mr. CRANSTON. I thank the Senator from Maryland for that strong statement of support. I will continue to work with her to ascertain whether the Department's regulatory actions are acceptable.

My second concern is that the Department will not be able to provide Congress with an accurate estimate of the potential costs of our preservation efforts. An April 18 letter from the Department estimated, for example, that the cost of the Preservation Program will significantly increase in fiscal year 1993. I am concerned that—as with the section 8 contract renewals—the Department's estimates and information are not based on the most sophisticated data and analyses. I urge the Senator from Maryland to require the Department to subject their estimates to rigid field surveys and other verifying techniques and report to the relevant congressional committees by November 15, 1991 on their results.

Ms. MIKULSKI. I strongly share the Senator's concern about the Department's ability to assess accurately the likely cost of the Preservation Program. The committee report to this bill provides a sobering account of the Department's persistent budgetary failures on the section 8 front. I think the Senator's suggestion is an excel-

lent one and I intend to incorporate it in the conference report.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the previously mentioned letters be printed in the RECORD.

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

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT OF THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,

Washington, DC, April 22, 1991.

Hon. JACK KEMP,

Secretary, Department of Housing and Urban Development, Washington, DC.

DEAR SECRETARY KEMP: We are writing to comment on the regulations submitted to the Congress for prepublication review on April 5, 1991, which would implement the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA). As currently drafted, we do not believe that the regulations reflect Congressional intent in a number of very important provisions which are central to the preservation program.

In meetings on April 18th and 19th, our staffs had the opportunity to engage in an open and frank discussion of many of the problem areas with HUD staff. We have attached an annotated list of the issue areas discussed in order to make you fully aware of our deep concern. Let us add that this list is not all inclusive and that we believe that additional issues will arise during the public comment period.

Mr. Secretary, we appreciate the good intentions with which you and your staff approached the difficult task of writing these regulations. Our initial intention was to request that publication of the proposed regulations be delayed until we could resolve a number of the issues. However, in the interest of avoiding the time delays involved in re-obtaining Departmental and OMB clearances, we are not making that request.

We share a desire to work with you to resolve the problems in the proposed regulations. We expect close cooperation during the public comment period in order to make those changes, as outlined in the attachment, necessary to bring the preservation regulations into conformity with Congressional intent. Thank you for your attention to this matter of vital importance to the preservation of affordable housing.

Sincerely yours,

HENRY B. GONZALEZ,
Chairman.

MARGE ROUKEMA,
Ranking Member.

ALAN CRANSTON,
Chairman, Senate Subcommittee on Housing and Urban Affairs.

CONGRESSIONAL CONCERNS ON PROPOSED PRESERVATION RULE

APRIL 23, 1991.

1. MAJOR ISSUES

Unwarranted emphasis on resident homeownership:

The permanent preservation program established by the 1990 Act places prime emphasis on the need to retain the affordable housing inventory for its remaining useful life. This permanent solution emerged after intense negotiation among diverse interests and constituencies. Countless alternatives were offered, analyzed, dissected and ultimately either rejected outright or subsumed in some form in the final legislative compromise.

One alternative clearly considered and rejected during the legislative process was the Administration proposed promoting conversion to resident ownership as the principal means of preserving the older subsidized inventory as low-incoming housing. Organizations and individuals throughout the nation criticized this proposal as "mistakenly emphasiz[ing] resident ownership rather than permanent affordability as the preferred and most heavily subsidized alternative." (Senate Banking Committee Report at 107)

As finally constituted, the primary objective of the Conference Report is to preserve the at-risk inventory for use by very low, low and moderate income persons over the long term. Despite the fact that resident homeownership may be in conflict with this objective, the Conference Report did carve out a limited role for resident homeownership programs. That was done out of deference to Secretary Kemp's commitment to the concept and in recognition that the program would affect only a small proportion, 7 percent by the Administration's own calculations, of the at-risk universe.

The draft regulations ignore the extensive legislative history and devise a sales process heavily biased towards resident homeownership. As an initial matter, the draft rule (section 248.1) adds as a purpose facilitating the sale of housing to residents under the resident homeownership program (p. 148). The rule then proceeds to revise the preservation sales process in several ways to place resident homeownership at an advantage over other forms of ownership that would guarantee preservation of housing affordability for the long term.

1. Only resident councils can achieve early site control and expedite the acquisition of at-risk housing: The draft rule permits owners to accept only those offers tendered by resident councils during the 12 month marketing period. (Sec. 248.157(h) at p. 206) Offers submitted by all other priority purchasers must be held until the end of the 12 month marketing period. (Id.)

As noted above, this favored treatment of resident councils runs directly contrary to the legislative history. We believe that it is consistent with the overall statutory scheme for the Department to attempt to create a level playing field between purchasers with disparate resources and capacities. But there is absolutely no legislative basis for distinguishing resident councils from other tenant-purchase entities or community-based nonprofits.

In addition, the imposition of a minimum 12 month marketing period is inconsistent with the statutory scheme. The statute contemplates that, where possible, plans of actions would be prepared during the 12 month period; a time consuming and costly step that can only be taken after a bona fide offer has been accepted.

Such a long waiting period would have adverse consequences for owners and prospective purchasers alike. It will create a strong disincentive for owners to sell their property and, in so doing, vitiate the owners' ability to act upon its preferred choice in accordance with the statutory scheme. Moreover, it renders the sale program unworkable from the buyer's point of view because predevelopment funding cannot be obtained and due diligence reviews cannot be completed on a timely basis.

2. Resident councils are given top priority status among competing priority purchasers: (Id.) At the end of the 12 month marketing period, offers for preservation value are ranked, with resident councils receiving the highest ranking over the other priority purchasers: community-based nonprofits, public agencies and other nonprofits. (Id.)

We appreciate the Department's efforts to answer the very practical question concerning which buyer would be selected in the event of comparable offers. We agree with the Department's interpretation that the Statement of Managers may support "establishing a priority for community-based nonprofit organizations in the procedures for selecting among priority purchasers that make bona fide offers." (Preamble, p. 32-33) But, again, the legislative history repeatedly rejected giving first priority status solely to resident councils.

3. In order to participate in the homeownership program and qualify for any grant assistance, the resident council is required to prepay those assisted mortgages that carry affordability restrictions: (Preamble, p. 99; Sec. 248.173(s), p. 236) The statute (sections 226(b)(2) and 226(b)(10)) reveals the Congressional expectation that resident homeownership might assume a variety of forms and that, specifically, resident councils might assume the HUD mortgage and own a project as a limited equity cooperative.

Conditioning participation in the homeownership program on a termination of federal use restrictions runs directly contrary to the fundamental objective of the statutory scheme—long term preservation. Congress was clearly hopeful that the preservation objective could be accomplished even within the context of resident homeownership.

4. It appears that residents who pursue the homeownership option may only receive grant assistance and are prohibited from using alternative preservation incentives authorized by Section 219(b): (Preamble, p. 92; Sec. 248.173(e), p. 226)) Section 220(d)(3)(A)) expressly authorizes the provision of the incentives listed in section 219(b) to all qualifed purchasers, which includes resident councils. The conferees "intend[ed] that the Secretary work closely with priority purchasers to determine which mix of subsidies best suits their preferences and organizational capacity." (Conference Report, p. 465)

The draft regulations, by contrast, eliminate the Congressional emphasis on flexibility and choice. Having determined that resident councils must prepay the underlying mortgage, the draft regulations limit the form of assistance available to such organizations to grants. Yet, as noted above, HUD's narrow focus on one resident homeownership model is contrary to the statutory scheme. Congress clearly included limited equity cooperatives under the resident homeownership umbrella and such cooperatives, among other tenant-based purchasers, may prefer financing an acquisition with insured debt and subsidized rental assistance rather than grants.

HUD should amend its draft regulations to establish a flexible and workable transfer program that takes into account the concerns noted above.

Failure to publish appraisal guidelines for notice and comment:

Section 213(c) requires HUD to establish written guidelines for appraisals of preservation value. The statutory language and the Statement of Managers provide a series of instructions for HUD to follow in establishing the guidelines.

All experts agree that the appraisal process will be the most important step in the

preservation program. Given this central role, it is imperative that all interested parties—Congress, tenants, owners, States, advocates—be given an opportunity to review and comment upon the appraisal guidelines before they are finalized.

The draft regulations do not contain the appraisal guidelines nor provide any indication of an intent to publish them for notice and comment.

HUD should move quickly to publish the appraisal guidelines in the Federal Register and allow a reasonable period for notice and comment by all interested parties.

Windfall Profits Test:

Section 222(e) delineates a "windfall profits test", permitting HUD to make incentive payments available only in rental markets where there is an inadequate supply of decent, affordable housing (if HUD determines there is adequate data to permit "objective and fair implementation") or where necessary to accomplish the other public policy objectives of the Act.

The provision also requires HUD to submit a report to the Congress "evaluating the availability, quality and reliability of data to measure the accessibility of decent, affordable housing" in all areas where eligible properties are located. On April 4, 1991, HUD transmitted a letter to the Congress detailing its evaluation.

Three separate issues are raised by our review of the draft regulations and the April 4th letter.

First, the Statement of Managers instructs HUD to "define how the "windfall profits test" will be implemented in notice and comment rulemaking." (Conference Report, 469) The draft regulations do not provide such a definition.

Second, the April 4th letter has several major deficiencies and does not, in our opinion, satisfy the statutory mandate.

1. The Department's experiential history with other programs is referenced, in lieu of an "evaluation" of available data sources needed to implement section 222(e). There is no explanation of how the determinations made under these other programs (such as the delineation of Difficult Development Areas for purposes of the low income housing tax credit program) are germane to the determination required by section 222(e).

2. The Department strongly suggests that an inadequate supply of decent, affordable housing is a relative concept, without explaining how this comparative standard would be applied, or explaining why an absolute threshold has been rejected. We believe that an absolute standard is more consistent with the statutory framework and legislative deliberations. The present and anticipated need in a given community should be compared with the current supply in that community to reach a decision on whether the supply of decent, affordable housing is adequate or inadequate.

3. Even where the supply of decent, affordable rental housing is adequate, section 222(e) requires an analysis of other public policy objectives—most significantly, the standards delineated under section 238(a). The letter fails to describe this part of the test in sufficient detail.

Third, the Department has not clarified how the windfall profit test relates to the comprehensive housing affordability strategies. It would appear that these locally prepared strategies could more accurately assess the adequacy of the affordable housing supply in a local rental market than the Department's own evaluations.

In summary, the Department's actions to date have not given us the comfort that the windfall profits test will be applied only in "exceptional cases", as envisioned by the Statement of Managers. (Conference Report, 469)

HUD should send Congress a revised report pursuant to section 222(e) evaluating the availability, quality and reliability of data sources for impelmenting the windfall profits test.

HUD should publish in the Federal Register an explanation of how the windfall profits test will be implemented (taking into consideration the concerns noted above) and allow a reasonable period for notice and comment by all interested parties.

2. REGULATORY PROVISIONS WHICH IGNORE CLEAR CONGRESSIONAL INTENT

Annual automatic rent adjustments:

Section 222(a) states that "future rent adjustments shall be made by applying an annual factor (to be determined by the Secretary) to the portion of rent attributable to operating expenses for the housing."

The provision was drafted in consultation with the Department—which expressed concern that adjusting future rents based on actual operating costs would reward management inefficiency. The option chosen was perceived by all involved as a cost-effective way of bringing certainty and administrative simplicity to the rent adjustment process.

The draft regulations have now created confusion about how the Department intends to implement this provision. The draft regulations simply track the statutory language, providing no guidance on how the provision would be carried out. More significantly, the regulatory preamble states that the Department may not have the data necessary to implement this provision and raises the possibility that the Department would seek to eliminate the requirement by legislative amendment. (p. 66–67)

HUD should amend its draft regulations to provide clear guidance on the rent adjustment procedure.

Receipt of 8 percent return for owners accepting incentives:

Section 219(a) instructs the Secretary to enter into such agreements as may be necessary to, *inter alia*, enable an owner to receive the authorized 8% return on preservation equity. This statutory instruction is not qualified or limited in any respect. Conferees expected that owners would receive this return beginning in the first year following approval of the Plan of Action. HUD might, for example, allow owners to withdraw residual receipts for this purpose or, in a Section 236 project, defer the rebate of excess rents.

The regulatory preamble, by contrast, states that "the statute does not necessarily guarantee [the 8 percent return] on an annual basis." (p. 56) The preamble then delineates a two-part rule: (1) HUD will approve rents at a level that ensures that owners receive the full 8 percent return beginning in the third year; and (2) an owner may accrue the amount not realized during the three year phase-in and realize that amount in later years through withdrawal of residual receipts. (Id.)

HUD should amend its draft regulations to ensure that owners receive the authorized 8 percent return beginning in the first year following approval of the Plan of Action.

Receipt of 8 percent return on cash invested by priority purchasers:

Section 220(d) states clearly that qualified purchasers (which include priority purchasers) should receive an adequate return on any actual cash investment.

The limitation of Section 241(f) insured financing to 95 percent of preservation equity raises the possibility that priority purchasers will contribute actual cash to an acquisition. The conferees did not believe that priority purchasers should be treated any differently than for-profit purchasers in the event of cash investment.

The regulatory preamble does not follow the legislative intent. The preamble states that "in cases where the project is being transferred to a *for-profit qualified purchaser*, incentives will be structured to enable the purchaser to realize an 8 percent return on investment." (73, emphasis added) The preamble is silent on the level and form of return that a priority purchaser will be allowed to receive.

HUD should amend its draft regulations to allow priority purchasers to receive the same return on any cash investment as other qualified purchasers.

Owner membership on nonprofit board and related party rule:

The conferees expected the Department "to develop sensible rules to implement the related party provisions." (Conference Report, 468) The Statement of Managers notes, for example, that "[i]f * * * an "individual is involved in the ownership of an assisted project and also participates, in his or her personal capacity and without compensation, on the board of directors of a nonprofit organization that seeks to acquire a project from the owner, this participation alone would not trigger the application of the related party rule." (469)

The draft regulations ignore the clear legislative intent cited in the Statement of Managers. Section 248.101 would consider an owner and a purchaser related parties if "any officer, director or employee of the owner is an officer or director of the purchaser". (p. 162)

HUD should amend its draft regulations to follow Congressional intent on the related party rule.

Nonprofit partners and related party rule.

A colloquy on the Senate floor between Senators Kerry and Cranston further circumscribed the scope of the related party rule. Senator Cranston clarified that the related party rule was not meant to cover situations where nonprofit sponsors serve as general partners in a syndicated ownership entity and seek to use preservation incentives to buy their projects back from for-profit investors. (See, Congressional Record, October 26, 1990, p. S17137)

The draft regulations cited above would appear to disallow the types of transactions contemplated by the Kerry-Cranston colloquy.

HUD should amend its draft regulations to follow Congressional intent on the related party rule.

3. REGULATORY PROVISIONS WHICH IGNORE IMPLICIT CONGRESSIONAL INTENT

Section 241(f) loan term.

The Section 241(f) insurance program was the center of much discussion and debate during the legislative process. Congressional discussion always assumed that the Department's practice of underwriting 241(f) loans for 40 years—established under the emergency preservation solution enacted in 1987—would continue under the permanent preservation program. This expectation is evidenced by the Statement of Managers example on how the revised program would work. (Conference Report, 467)

The draft regulations provide—without explanation—a marked shift from current practice. Section 241.1060 states that a 241(f) loan would have a maturity equal to the remaining term of the first insured mortgage or twenty years, whichever is longer. (p. 133)

HUD should amend its draft regulations to allow 40-year Section 241(f) loans.

Combination of Section 241(d) and 241(f) loans:

Section 241(f)(6) permits HUD to combine loans insured under section 241(d) with equity and acquisition loans insured under section 241(f). The conferees expected that this combination of loans would be carried out in an effective common sense fashion—perhaps by adding the rehabilitation expenses that are mortgagable under the section 241(d) program to a section 241(f) loan.

The draft regulations do not provide a mechanism for combining the underwriting of rehabilitation and equity or acquisition loans under the section 241 program. Failure to combine these loans may make it difficult to sell one or both of the loans on the secondary market. In addition, various features of the section 241(d) program—statutory cost limits, additional equity requirements—are antithetical to the purpose of the preservation program.

HUD should amend its draft regulations to allow for combination of section 241(d) and section 241(f) loans. If necessary, we would entertain any suggestions for technical revisions to the preservation law to achieve this objective.

Seller financing and related party rule:

As noted above, the statute limits insured acquisition financing to 95 percent of preservation equity. The conferees fully expect that the 5 percent equity contribution could be provided through seller purchase money financing or a charitable donation by the seller.

The draft regulations would appear to disallow such financing arrangements. Section 248.101 would consider an owner and a purchaser related parties if "the owner has made or intends to make any loan to the purchaser in connection with the transfer of the project". (p. 162) The preamble goes further by prohibiting the seller from making a grant or other financial assistance to the purchaser, which is presumably a reference to predevelopment funding. (p. 38) If HUD's regulation was meant to impede sellers from creating captive non-profits or otherwise engaging in self-dealing it has been written too broadly.

HUD should amend its draft regulations to follow Congressional intent on the related party rule.

Reimbursement of transaction costs for nonprofit purchasers:

Section 220(d) states that priority purchasers should receive adequate reimbursement for transaction expenses related to acquisition of eligible housing, subject to HUD approval. Conferees were plainly aware of the types of legitimate costs that priority purchasers incur during acquisition of assisted housing. The Section 241(f) program, in fact, was revised so that insured acquisition loans for priority purchasers could include any expenses associated with the acquisition, loan closing and implementation of the plan of action.

The draft regulations would provide little guidance on what costs would be reimbursable. Section 248.157(m)(6) would simply make reimbursement of priority purchaser transaction expenses consistent with the standards of other insurance programs. (p. 210) We are concerned that these "other" standards recognize the unique objectives and framework of the preservation program.

HUD should amend its draft regulations to provide firm guidance on what tansaction expenses are reimbursable, consistent with the letter and spirit of the Conference Report.

Other sales-related issues:

As noted above, the permanent preservation program—unlike the emergency 1987 measure—delineates a structured process for transferring the assisted inventory to new ownership. The process contains substantial risks; owners seeking to transfer their housing are allowed to prepay if no qualified purchaser makes a bona fide offer within the applicable time periods. Given the specter of prepayment and loss of afordable housing, the conferees fully expected the Department to establish by regulation and practice a workable transfer program.

The draft regulations appear to fail on this score in several respects.

1. Earnest Money Deposit: Section 248.157(g) requires that an earnest money deposit equal to 1 percent of preservation value be tendered along with the bona fide offer. (p. 205) Although we agree that a reasonable deposit is appropriate to establish buyer credibility, we believe that the proposed amount is too high relative to owner risk and may be unaffordable to practically every priority purchaser. The Resolution Trust Corporation, by contrast, does not impose a fixed earnest money deposit requirement.

The timing of the deposit may also be unrealistic, since it is axiomatic in real estate transactions that a substantial deposit is tendered at the point when site control is secured by the buyer. Purchasers who are dependent on third party lenders for predevelopment funds will not be able to secure the funds necessary to satisfy any earnest money deposit requirement as the program is currently structured. The problem is compounded by HUD's decision to permit an owner, in a voluntary sale context, to reject any and all bona fide offers because of a change of mind.

2. Bona Fide Offer: Section 248.101 contains a general definition of "bona fide offer". (p. 154) Section 248.157(i) requires the Commissioner to review each bona fide offer to determine whether it satisfies the general definition. (p. 206)

Two concerns are raised by this regulatory framework. First, there is concern that the lack of specificity in the definition of bona fide offer will allow for subjective and inconsistent determinations by HUD field offices. Second, there is concern that HUD's review of each and every bona fide offer amounts to regulatory overkill—and is better left to the reviews required during the plan of action phase.

HUD should amend its draft regulations to reconsider the timing and amount of earnest money deposits in accordance with the concerns noted above.

HUD should amend its draft regulations to contain model documents for bona fide offers.

HUD should amend its draft regulations to devise less burdensome review procedures for the transfer process.

4. REGULATORY PROVISIONS WHICH SIMPLY RESTATE STATUTORY LANGUAGE

Special role for State housing agencies:

Congress envisioned that State housing agencies would play an active role in the permanent preservation program. Section 227 would permit HUD to delegate authority for processing prepayment workouts to State housing agencies when certain conditions are met. In addition, section 213(c) would permit an appraiser to rely upon assessments of rehabilitation needs and other costs of conversion that have been determined by an appropriate State agency. Finally, section 241(f)(1) permits HUD to enter into risk sharing arrangements with State housing finance agencies.

The draft regulations provide little or no guidance on how these various State-directed provisions will be implemented.

HUD should amend its draft regulations to provide firm guidance on the implementation of provisions permitting the active participation of State housing agencies.

Section 218 standards:

Section 218 establishes specific criteria for approving plans of actions that seek termination of the low-income affordability restrictions. HUD could approve such a plan of action only upon finding that the plan would neither (1) create hardship for current tenants or displace them where comparable and affordable housing is not readily available nor (2) materially affect the general supply of low-income housing in the market area, lessen the ability of low-income people to find housing near job opportunities or reduce housing opportunities for minorities.

The draft regulations simply parrot the statutory language and provide no firm guidance on how these standards will be implemented with respect to an individual project. The Department's recent approval of a prepayment request in Madison, Wisconsin—over the objections of State and local governmental entities—raises serious concerns that the section 218 standards will be implemented in an arbitrary and inconsistent manner.

HUD should amend its draft regulations to provide firm, uniform guidance on the implementation of the section 218 standards.

DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,
Washington, DC, May 22, 1991.

Hon. ALAN CRANSTON,
Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of April 22, 1991, on the Department of Housing and Urban Development's (HUD) proposed regulations on the "Low-Income Housing Preservation and Resident Homeownership Act of 1990" (LIHPRHA) submitted to the Congress for prepublication review. Similar responses are being sent to Representatives Gonzalez and Roukema. It is always a pleasure to hear from you.

I appreciate your interest in reviewing this important regulation and your willingness to share with the Department a list of concerns in specific issue areas. The proposed regulations were published in the Federal Register on May 2, 1991, and HUD will be accepting public comments for a 60-day period. It would be inappropriate for me to publicly respond to each of your concerns until all comments have been received and fully considered. However, it may be useful to make a few general observations with respect to what appears to be the areas of greatest concern.

The first major issue raised on your list of concerns is that the regulations place "an unwarranted emphasis on resident homeownership." As the title of the Act makes clear, expanding homeownership opportunities for low- and moderate-income families is a very major purpose of this legislation. It is particularly important because homeownership assures that the substantial government investment in these properties will benefit the residents. Resident ownership will not only preserve these properties for the future, but also expand the equity base to help low-income people escape the poverty trap. I know you would agree with me that the purpose of housing programs must be to help low-income people achieve economic inde-

pendence and decent housing. Developers and others are partners of HUD in this effort, not the clients.

I also think that your concern represents an unintended reading of the regulations. The legislation establishes several types of entities as priority purchasers with a "right of first offer." With more than one type of entity having a right of first offer, it was necessary to establish some order of priority. Resident groups need adequate time to organize, plan, and gather resources necessary to submit a "bona fide offer." The intent of the regulation is, therefore, to "level the playing field" for resident groups as well as community-based non-profits willing to preserve projects as affordable rental housing. Community-based non-profits have the next highest priority among priority purchasers.

Establishing a first priority among priority purchasers for residents interested in pursuing homeownership is critical. I strongly believe that residents seeking to become homeowners need adequate time and resources to organize and plan before other purchases or transfers may occur. The Department estimates that at least 25,000 units of the "at-risk" universe of 360,000 units are likely to be converted to homeownership. This is only a rough estimate based on simplifying assumptions of income and operating expenses, and it should not be considered definitive or a constraint on the potential universe of homeowners.

I recognize that under the proposed regulations, other priority purchasers cannot have their bona fide offers accepted until the end of the statutorily specified 12-month right of first offer period. To help realize the Department's goal of maximizing units converted to homeownership, the 12-month period will assist other potential purchasers put together viable bid packages to preserve projects as affordable rental housing. In particular, the 12-month waiting period will give community-based non-profits adequate time to prepare their plans and to organize residents.

It is important to remember that if no bona fide offers are made, owners will be free to prepay their mortgages and convert their properties to uses other than affordable rental housing for low-income families. The 12-month right of first offer period will, therefore, be critically important to help prevent unnecessary prepayments and the resulting dislocation of poor people, which I know we both want to avoid.

The other two major concerns raised on your list of issues relate to the absence in the proposed regulations of the appraisal guidelines and the windfall profits test. Given the key role that appraisals play in determining the amount of incentives and the maximum sales price for properties, I believe it is important to publish the guidelines so as to provide an opportunity for public comment. Draft appraisal guidelines are currently being circulated for review within the Department. As soon as this process is completed, it is the Department's intention to publish the appraisal guidelines as a notice for comment in the Federal Register.

With respect to the windfall profits test, the legislative requirement was for HUD to initially determine whether it is feasible to develop such a test. As the Conference Report notes, the purpose of the windfall profits test is to assure that "the preservation solution not be used to provide incentives to owners who would not have prepaid, given local market conditions." My April 4, 1991, letter report to the Congress concluded that it was feasible to develop a windfall profits test. If HUD decides to develop and implement a windfall profits test, then it is the Department's intention to publish the specifics as a notice for comment in the Federal Register. The notice will, in part, address the questions and concerns discussed in your list of issues.

Although I have touched on only a few points raised in your list of issues, be assured that all of your concerns will be carefully reviewed and given the fullest consideration as the regulations are revised. The regulations are in a proposed form because of the need for full public discussion and comment on all issues and by all interested groups and individuals before this program is implemented.

One of the major achievements of the Cranston-Gonzalez National Affordable Housing Act was to develop a permanent solution to the problems posed by the potential prepayment of HUD-assisted mortgages and conversion to other uses of 360,000 units of affordable rental housing serving low- and moderate-income families. This solution was made possible only because of the close cooperation between the Administration and the Congress. It is my intention to continue this relationship to assure that a successful program of housing preservation and resident homeownership is implemented.

Thank you for your interest in the new low-income housing preservation and resident homeownership program.

Very sincerely yours,

JACK KEMP,
Secretary.

CHEMICAL ACCIDENT SAFETY BOARD

Mr. LAUTENBERG. Mr. President, I rise in support of the committee amendment to provide up to $1 million for the Chemical Safety and Accident Review Board.

Mr. President, this amendment would require that EPA provide up to $1 million for the Chemical Safety and Hazard Investigation Board which was authorized by the Clean Air Act Amendments of 1990.

Mr. President, the air toxics provisions of the Clean Air Act, which Senator DURENBERGER and I authored, included a new program to address chemical accidents. Some chemicals are extremely hazardous and, if not handled properly, pose significant risk of accidents.

According to EPA, there have been over 300 deaths and almost half a million people evacuated between 1982 and 1986 as a result of chemical accidents. And at least 17 of these events had the potential for more damage than occurred at Bhopal, where 3,400 died and 200,000 were injured from a catastrophic release.

And an article which appeared in the New York Times last month describes a rash of fires and explosions at refineries and chemical plants which has occurred since 1987. This article makes clear that the health and welfare of citizens in communities with facilities which use extremely hazardous substances, as well as the workers in these facilities, are threatened by inadequate safety precautions. I ask unanimous consent that a copy of the article be printed in the RECORD.

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

[From the New York Times, June 19, 1991]

PETROCHEMICAL DISASTERS RAISE ALARM IN INDUSTRY

(By Keith Schneider)

CHARLESTON, SC, June 18.—The blast that killed six workers at a chemical plant here on Monday was the latest in a streak of fires, explosions and poison-gas leaks at refineries and chemical plants around the nation.

Since October 1987, when a leak of hydrogen fluoride gas at a Marathon Oil refinery forced the evacuation of thousands in Texas City, Tex., the American petrochemical industry has endured one of the deadliest periods in its history, one that has baffled Government experts and alarmed company executives. The 12 worst explosions have killed 79 people, injured 933 and caused roughly $2 billion in damage.

In the last six weeks, before the blast here Monday at the Albright & Wilson Americas plant, an explosion at the Angus Chemical Company in Sterlington, La., killed 8 workers, injured 128 workers and residents, wrecked businesses and ruined so many homes that 23 families are still living in motels.

The explosion at Albright & Wilson Americas, a subsidiary of the Tenneco, occurred as workers were mixing chemicals to make a flame retardant used in textiles and is being investigated. Twenty-one employees and two firefighters were injured.

ARE THERE ANY LINKS?

Oil and chemical industry executives acknowledge that the number of recent big accidents, but they say they do not know if there is a common link. A petroleum trade group has begun a study to determine if there is a thread.

But independent safety experts and industry unions point to several trends that they say have made plants and refineries more dangerous: a growing dependence on the use of outside contractors, slipping safety standards, improper and inadequate training, flaws in engineering and design, old and deteriorating equipment, and a more aggressive drive for profits.

Gordon Strickland, assistant vice president of the Chemical Manufacturers Association, the industry's policy group in Washington, said that safety and training are improving, and denied that any of these factors were causing the rash of problems.

"The accidents that have occurred, it seems, all have different causes," he said. "The consequence is that one cannot nail it down to design or maintenance or whatever. And I don't believe that safety is anything but a first-line interest and concern in our industry."

THE DEATH RATE DOUBLES

An independent research group in Chicago, the National Safe Workplace Institute, said that the fatality rate from 1971, when the Occupational Safety and Health Administration was established, until the early 1980's was less than 10 a year. Over the past four years, the rate has been more than double that.

In 1987, according to the institute, the number of deaths and injuries in the petrochemical industry began to rise steadily. In 1989, an explosion at the Phillips Petroleum plastics plant in Pasadena, Tex., killed 23 workers. A year later, 17 workers were killed at an ARCO Chemical Company plant in Channelview, Tex. In the first six months of

this year, 23 workers have died in five accidents.

The safety group based its estimate on news articles and interviews with business executives, labor groups, and Government officials.

On Monday, in the Charleston accident, 6 workers were killed and 23 injured when a chemical reactor apparently exploded without warning. Investigators from the company, and the State Labor Department have not determined the cause of the explosion.

But some aspects of the explosion described today by the plant's general manager and several workers were reminiscent of previous accidents. It occurred soon after a week-long shutdown; many of the workers killed or injured were contract workers, not plant employees, and new controls were being installed.

At this stage in the investigation there is no way to know if any of these factors contributed to the accident. And there is not a Federal agency that compiles statistics and investigates every accident the way the National Transportation Safety Board does, for example, with air crashes.

Although amendments to the Clean Air Act signed into law in 1990 established a Chemical Safety and Hazard Investigation Board, the White House has yet to appoint any members or provide funds.

The White House, in a statement, said it has not acted because of concerns over the structure of the board, how its activities will be coordinated with the Environmental Protection Agency and OSHA, and whether it will function as an independent group or under the jurisdiction of the President.

But Mr. Strickland of the chemical manufacturers group said there should be no delay: "Congress intended for the board to be established rapidly, and the events we see today suggest it should be expedited as quickly as possible."

OSHA now conducts investigations at accident sites, but its findings are often kept secret, pending the outcome of court cases involving penalties or, in rare cases, criminal charges.

WE LIVE IN TOXIC CITY

In the cities and towns that are host to the nation's 2,300 refineries and chemical processing plants, more and more workers and residents are asking whether the disasters are a coincidence, or an urgent signal.

"We live in toxicity, and it is very scary," said Bebe Lising, 39, a resident of Texas City and chairwoman of the Galveston-area chapter of the Sierra Club. "People have been kept so in the dark, and a lot of jobs are dependent on the industry. Our local health department is understaffed, and the plants monitor themselves."

Labor Department reviews show that the rate of injuries in refining and chemical plants is half the national rate for all manufacturing industries and has been declining. But the statistics do not take into account deaths and injuries suffered by employees of engineering and construction companies that work under contract.

Contract workers, whose numbers are rising in chemical and refining plants, are generally paid less and perform more dangerous duties than fulltime workers. Mistakes by these workers have been linked to many of the most serious accidents, including a disaster in October 1989 at the Phillips Petroleum plant near Houston that killed 23 workers and injured 232 people.

A study commissioned by OSHA determined last year that contract workers had much higher turnover rates than regular employees, received far less training and were much less aware of safety procedures in the event of an accident. The study, by the John Grey Institute of Lamar University in Texas, found that contract laborers were "routinely instructed to run in the event of an emergency," leaving regular employees to fight fires and shut down pumps and pipelines.

OSHA, a unit of the Department of Labor, is proposing a rule to require companies to give more training to contract workers. The American Petroleum Institute, the oil industry's principal trade group, has urged the Department of Labor to change its practices and report injury and accident statistics for all employees plant by plant.

Six months ago, the Petroleum Institute also started a study to see if any of the accidents had common characteristics. The study may be completed before the end of the year.

"There is great attention given to safety," said Charles Thomas Sawyer, vice president of industry affairs at the Petroleum Institute. "Is there a common reason for all of these accidents? I don't know the answer to that right now."

Last year, Congress directed OSHA and the E.P.A. to require companies to conduct studies of the potential castastrophic hazards of their plants and to submit plans for preventing accidents.

OSHA has almost finished its regulations. The E.P.A. has until 1993 to finish its regulations, which are aimed at modernizing equipment and improving manufacturing. Next month, the E.P.A. is scheduled to meet with state officials from New Jersey and California, the first states to establish rules for preventing chemical disasters.

The operating weaknesses in the petrochemical industry, say independent experts, may be the result of the aggressive cost cutting prompted by the corporate takeovers and mergers of the 1980's. To protect themselves from takeovers, or to finance the mergers, oil and chemical companies greatly increased production even as they cut costs and staff.

JOB TOTALS ARE SLASHED

More than 40,000 jobs have been cut in the refinery industry since 1982, according to the Petroleum Institute, leaving about 115,000 refinery workers. About 30,000 hourly jobs were lost in the chemical industry, according to the Oil, Chemical, and Atomic Workers International Union. Phillips Petroleum employed 30,000 people before it came under attack by T. Boone Pickens in the mid-1980's. By October 1989, when its chemical complex near Houston exploded, it employed 22,000.

"No sector of the economy was affected more by the raiders than the oil and chemical industry," said Joseph A. Kinney, director of the National Safe Workplace Institute. "Workers are paying for it with their blood."

Though industry executives say cutting costs has not affected safety, officials at OSHA say economy measures and their potential to compromise safety is a valid issue.

DEADLY BLASTS, TOXIC CLOUDS

The most serious chemical and refining accidents in the United States in recent years:

1. Texas City, Tex., Oct. 30, 1987: A worker operating a crane at Marathon Oil's Texas City refinery dropped a heater on a storage tank, causing a rupture that released 30,000 pounds of hydrogen fluoride gas. Three thousand residents were evacuated for three days, and 800 people were treated for breathing disorders and skin problems.

2. Pampa, Tex., Nov. 14, 1987: Butane and acetic acid leaked from a ruptured tank, forming a vast cloud of vapor that caught fire and exploded, destroying the Hoechst Celanese chemical plant, killing 3 workers and injuring 35 people. Economic loss, including property damage, lost production, legal expenses and fines: $241 million.

3. Henderson, Nev., May 5, 1988: Fire and explosion destroyed a Pacific Engineering and Production Company plant that manufactured ammonium perchlorate, a component of rocket fuel. Two employees, including the plant manager, were killed, 350 people were injured, 17,000 people were evacuated from their homes, and property damage was found 12 miles from the plant. Economic loss: $75 million.

4. Norco, La., May 5, 1988: An eight-inch pipe ruptured at a Shell Oil refinery, releasing a vapor cloud that ignited and exploded, killing 7 workers, injuring 42 and causing property damage that resulted in 5,200 claims. Economic loss: $327 million.

5. Pasadena, Tex., Oct. 23, 1989: A valve on a polyethylene reactor was left open at a Phillips Petroleum plastics plant, venting gases that caught fire and exploded with the force of 10,000 pounds of TNT. Twenty-three workers died, 232 people were injured, and the plant was destroyed. Economic loss: $750 million to $1 billion.

6. Baton Rouge, La., Dec. 24, 1989: A pipeline operating at high pressure ruptured at the Exxon U.S.A. refinery, releasing a cloud of ethane and propane that exploded, killing two workers, injuring seven and causing property damage up to six miles away. Economic loss: $44.7 million.

7. Channelview, Tex., July 5, 1990: An explosion in a compressor at a plant belonging to a chemical company owned by Atlantic Richfield killed 17 workers. Economic loss: $90 million.

8. Cincinnati, July 19, 1990: A fire and explosion at the BASF coatings and ink plant resulted from the cleaning of a chemical reactor vessel with volatile solvents. Two workers died, 80 people were injured, much of the plant was destroyed and 162 buildings were damaged. Economic loss: Company will not reveal.

9. Lake Charles, La., March 3, 1991: A fire and explosion killed 6 workers, injured 12, and caused extensive damage at the Citgo Petroleum refinery. Economic loss: Company will not reveal.

10. Corpus Christi, Tex., March 6, 1991: Two workers died and five were injured when hydrofluoric acid vapors escaped from a gasoline blending unit at the Kerr-McGee Corporation's Southwestern Refinery. Economic loss: Company will not reveal.

11. Port Lavaca, Tex., March 12, 1991: An explosion in the ethylene oxide unit of Union Carbide's Seadrift plant kills 1 and injures 19. Economic loss: $50 million to $75 million.

12. Sterlington, La., May 1, 1991: A fire in or near a compressor detonated nitro methane at the Angus Chemical Company plant, killing 8 workers, injuring 128 workers and residents, destroying much of the town's main business district and leaving 30 families temporarily homeless. Economic loss: more than $110 million.

13. Henderson, Nev., May 6, 1991: A pipe from a storage tank at the Pioneer Chlor Alkali plant leaked thousands of gallons of liquid chlorine in the middle of the night, causing evacuations, shutting down the city, sending 55 people to hospitals for treatment of injuries, mostly breathing problems.

14. Charleston, S.C., June 17, 1991: An explosion and fire at the Albright & Wilson Americas chemical plant killed 6 workers and injured 23 others including 2 firefighters.

The accident occurred one day after a weeklong shutdown. Economic loss: still to be determined by the company.

Mr. LAUTENBERG. Mr. President, the Clean Air Act establishes a comprehensive program to address the public safety concerns posed by catastrophic releases of extremely hazardous substances.

As part of this program, the Clean Air Act establishes an independent Chemical Safety and Hazard Investigation Board, modeled after the National Transportation Safety Board. We need an independent board to ensure that chemical accidents will be subject to thorough investigations. The Chemical Board will investigate and report on chemical accidents involving death, serious injury and substantial property damage and make recommendations to EPA for action to prevent or mitigate chemical accidents. EPA must respond in writing to each recommendation. EPA is given authority to promulgate accident prevention regulations, and EPA must require leak detection systems.

Mr. President, I was in the negotiations with the administration before the Clean Air Act was brought to the Senate floor. The administration never raised a concern about this provision. The Board was included in the Senate, House, and final versions of the bill.

Suddenly, and with no warning, the President in his signing statement for the Clean Air Act said that a number of provisions relating to the Board were unconstitutional and would have to be corrected before the administration would establish the Board.

And in its budget request, the administration said it would request $5 million for the Board only after the Congress passed legislation to cure these alleged constitutional defects. That legislation has yet to be submitted to the Congress.

Because of the administration's failure to request funding and its expressed opposition to the Board as established, it appeared futile to set aside funds for the Board that the administration seemed decidedly unwilling to implement. So, neither the House nor the Senate Appropriations Committee provided funding for the Board.

Suddenly, last week, in a letter written to House Energy and Commerce Committee Chairman JOHN DINGELL, OMB Director Darman announced that the administration would submit a funding request for the Board to Congress. The letter also says the administration would begin the process of selecting Board members. I ask unanimous consent that the Darman-Dingell letter be printed in the RECORD.

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

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, July 9, 1991.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of June 21st concerning the establishment of the Chemical Safety and Hazard Investigation Board under the provisions of the Clean Air Act Amendments of 1990.

As mentioned in our letter to you of June 4, 1991, the Administration shares your concern about the accidental release of hazardous chemicals into the ambient air. I am writing to advise you of steps we are now taking to proceed with the establishment of the Board.

As you are aware, the totals for the President's FY 1992 Budget included funding for the Board within the domestic discretionary caps of the Budget Enforcement Act of 1990. We are now preparing the appropriations language necessary to make these funds available in Fiscal Year 1992 for transmittal to the Congress. We anticipate that the President will transmit this proposal in the very near future. In addition, EPA has been directed to work with the White House Office of Presidential Personnel to identify qualified individuals for potential appointment to the Board by the President.

It should be pointed out that before the Board can begin functioning, the Congress must provide appropriations for its operation. As you know, Congress did not provide any funding for the Board in FY 1991. Further, the House of Representatives did not inlcude any funding for the Board in the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations bill for FY 1992. Consequently, it will be incumbent upon the Senate to provide funding if the Board is to begin operation in FY 1992.

Thank you for your interest in this matter. I look forward to working with you on this and other issues in the future.

With best regards,

RICHARD DARMAN,
Director.

Mr. LAUTENBERG. Mr. President, I am pleased that the administration finally has decided to request funding for the Board. Unfortunately, the request comes so late in the appropriation process that available funds already have been allocated to other programs. We have been placed in this situation because of the administration's expressed antagonism toward the Board, its failure to request funds for the Board in a timely manner, and its failure to begin the process of establishing the Board.

Rather than at this late stage offset funding for the Board with cuts in other programs, this amendment would provide up to $1 million for the Board.

I urge my colleagues to support the amendment.

PALO ALTO VETERANS AFFAIRS MEDICAL CENTER

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I note that the distinguished floor manager, Ms. MIKULSKI, has done a tremendous job of putting together a bill that will be of very great value to our Nation's veterans. She has proven once again that she is, indeed, a true and effective friend of veterans.

However, Mr. President, with respect to one matter of absolutely crucial importance to veterans in northern California, I urge that, in conference with the House, she reconsider the position in the reported bill. That critical issue is fiscal year 1992 funding for the emergency replacement of the main hospital building at the Palo Alto VA Medical Center. That building was damaged and left unusable by the Loma Prieta earthquake in 1989.

Mr. President, since I have written the very able subcommittee Chair a detailed letter explaining why approval of the administration's fiscal year 1992 request is of such vital importance, I will not recount those reasons at this point. Rather, I will in a moment ask that the letter be printed in the RECORD and now ask the Senator from Maryland whether she has an open mind on this issue and will revisit it in conference.

Ms. MIKULSKI. Mr. President, I thank the Senator from California [Mr. CRANSTON] for his kind remarks regarding my efforts on the measure. He and I share an abiding commitment to meeting our obligations to those who have served. I assure him that I will give funding for the Palo Alto project every consideration in conference with the House.

Mr. CRANSTON. Mr. President, I thank the Senator and ask unanimous consent that the letter be placed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, July 18, 1991.

Hon. BARBARA A. MIKULSKI,
Chair, Subcommittee on VA, HUD, and Independent Agencies, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR BARBARA: I am writing to you on a matter of great urgency to the veterans of northern California—the deletion of funding for construction of the emergency replacement hospital at the Palo Alto VA Medical Center from FY 1992 VA-HUD appropriations bill (H.R. 2519). As you know, I believe you have again done tremendous work in putting together a bill that will be of great benefit to veterans. However, in this particular respect, I strongly urge that in conference with the House you reconsider the Committee's position.

The timely completion of this project is vitally needed to serve the veterans of northern California. Thus, I am writing to outline why I believe that the request for $40 million for FY 1992—as made by the Administration and approved by the House—is crucially important and why I am so strongly convinced that the reasons cited in the Committee's report for not appropriating these dollars in FY 1992 do not warrant bringing the project to a halt.

As you know, the Palo Alto project is for emergency replacement of the main hospital building, which was damaged and rendered structurally unsafe by the Loma Prieta

earthquake on October 17, 1989. To date, the President has allocated $20 million for design and site preparation for this project from the Unanticipated Needs for National Defense Account that Congress established in 1989 after the Loma Prieta earthquake and Hurricane Hugo. The FY 1991 VA appropriation did not make additional funds available since both your Committee and VA rightly believed that the amount then available was sufficient for the purposes of carrying out all the work that could be done in FY 1991. In the report that accompanied H.R. 5158 (S. Rept. No. 101-474, page 29), the Committee noted that it fully expected the Administration's budget request for FY 1992 to include funds for "the construction of the replacement Palo Alto VA hospital."

Rather than include the full amount in the FY 1992 budget, the Administration requested $40 million for the fabrication and placement of the structural steel. That amount is all that can be spent prudently in the FY 1992 budget cycle and thus was the amount requested, rather than the full $232 million necessary to complete the project.

The Palo Alto VA Medical Center has been functioning under extremely trying conditions for nearly two years. The heroic efforts of management and staff to deal with the crisis that was thrust upon them and the understanding and support of the Stanford medical school enabled VA to continue to provide good quality care under most extraordinary circumstances. This is all based on the belief that the Congress and the Administration will move as quickly as possible to correct the problems caused by a catastrophic event. So far, their trust has been borne out by the Congress enacting and the President allocating emergency funding to get the construction project underway in 1990; the Veterans' Affairs Committee's strong support for the project; your inclusion in the report on the FY 1991 appropriation bill of a clear, strong message recognizing the need for a replacement hospital and inviting an FY 1992 Administration request for funding; and the Administration's submission of an appropriate FY 1992 request and the House's approval of it.

Nevertheless, many services have unavoidably suffered and continue to suffer. Many patients are still located in day rooms and doubled up in patient rooms that do not meet privacy or safety standards. The medical center has no medical intensive care unit or coronary care unit. Much of the current activity—for example, the facility's morgue—is being carried out in trailers and other temporary structures. VA staff members lack adequate work space and five or six sometimes share office space designed for one person. Many radiology and laboratory services must be purchased from outside sources at substantial additional cost. Research activities continue to be impaired. The spinal cord injury unit, one of the finest in the VA system, must turn away patients, forcing them to seek care as far away as Seattle and Long Beach because spinal cord injury space has had to be used for medical service patients. Optimum patient care cannot be restored until the replacement facility is completed.

If the Congress or the Administration were to cause a delay at this point, I am fearful that the medical center staff would suffer a disastrous blow to its morale, which is the glue that is holding together the center's ability to function. The very beneficial affiliation with Stanford would be damaged; staff recruitment and retention would become very serious problems; and the quality of patient care at this highly affiliated tertiary care hospital could deteriorate rapidly.

Ever since the earthquake devastated the Palo Alto VA Medical Center, I have been in frequent contact with VA officials for two major reasons: I wanted to be sure that this important hospital was replaced as quickly as possible. I also wanted to be sure that what VA proposed for that site was appropriate to meet veterans' needs. I am, as you are, very sensitive to the issue of VA cost overruns and the need for prudence in construction design.

In this year's Appropriations Committee Report (S. Rept. No. 102-107, page 30), three issues were raised regarding the project: the size of the replacement structure, the wisdom of demolishing some of the remaining structures, and the possibility of moving the facility to Menlo Park. I wish to assure you that all of the matters which appear to be of concern have been thoroughly analyzed both by the Department and by the Veterans' Affairs Committee, and I want you to be aware of a number of matters that I believe speak directly to your Committee's concerns.

First, with respect to the size of the replacement structure, the Committee report noted that the square footage of the new structure will be 37 per cent larger than the one it is replacing and urged consideration of reducing the number of beds. Regarding square footage, it must be remembered that the main hospital building being replaced was over 20 years old at the time of the earthquake. Patient bed areas in the damaged building were 43 percent under current space criteria and major clinical and patient treatment areas, 37 percent under the current criteria. The 37-percent increase is, VA advises me, necessary to bring the facility up to current standards for space and functional operations.

As to the number of beds, northern California already lags far behind the rest of the nation in the number of beds available for each 1,000 veterans. The most recent available data show that, as of FY 1990, there were only 2.09 VA hospital beds per 1,000 veterans in California compared to 2.58 beds per 1,000 veterans nationally, which is over 23 percent more. According to VA, its plans for northern California, assuming completion of the Palo Alto project, are for 2.19 beds per 1,000 veterans in FY 2005. Reducing hospital care for northern California veterans would obviously be most unfair.

Second, regarding the need to demolish certain existing structures, VA fully considered the strategy of constructing a smaller new building and reusing wings D, E, F, and G. That approach was rejected for a number of reasons. Those structures have seismic and many other deficiencies that would require correction as part of the project, and the phasing of the performance of that work would entail a great deal of disruption and cost in the form of temporary relocations of the functions range plans and the need to control cost overruns should not disrupt an emergency hospital-replacement project, and there can be no higher priority than putting this major VA health-care facility back into full operation.

Barbara, I realize that your subcommittee faced very serious budgetary constraints and has been required to make difficult choices. I also acknowledge the great work you did for veterans in so many other respects. However the Palo Alto VAMC presents a dire and emergent need outside the ordinary planning process. Therefore, I urge that, in conference with the House, you accept the House position on funding this project. Further time spent studying it or its location is not warranted by the facts and could seriously impair quality of patient care available to the veterans of northern California.

With warm regards,

Cordially,

ALAN CRANSTON,
Chairman.

OFFICE OF POLLUTION PREVENTION

Mr. BAUCUS. Would the distinguished floor manager, the Senator from Maryland, yield for a colloquy regarding a provision in H.R. 2519 relating to the relocation of EPA's Office of Pollution Prevention?

Ms. MIKULSKI. I would be happy to yield to the chairman of the Environmental Protection Subcommittee, the senior Senator from Montana.

Mr. BAUCUS. Is it correct that the floor manager seeks to relocate the Office of Pollution Prevention in an effort to maximize our Nation's waste reduction efforts? Is it also correct to say that the Senator from Maryland is concerned that the placement of this office within an EPA Program office would reduce its ability to optimize its mission?

Ms. MIKULSKI. The Senator from Montana is absolutely correct.

Mr. BAUCUS. I would say to the Senator from Maryland that I support her on this issue. I believe that EPA's pollution prevention activities have suffered from its current location of the Office of Pollution Prevention. Given the priority I place on pollution prevention, EPA's Pollution Prevention Office must be strategically placed where it has an opportunity to maximize results. I would be happy to work with the chairperson to make certain that the location of the Office of Pollution Prevention enhances its mission—the minimization of waste production across all environmental media.

Ms. MIKULSKI. I thank the Senator from Montana. I look forward to working with the Senator on this matter.

Mr. BURDICK. If the manager, the Senator from Maryland, would yield, I too rise in support of her on this matter. I worked with Ms. MIKULSKI on this problem last year, and agree that the matter she raises, the proper placement of the Office of Pollution Prevention, can have an inordinate impact on the reduction of hazardous waste production in our Nation. I will work with her to find the most appropriate EPA location where the office can have the maximum impact for its mission.

Ms. MIKULSKI. I thank the chairman of the Committee on Environment and Public Works, and look forward to working with him, as well.

COST CONTAINMENT IN MEDICAID PROGRAM

Mr. BENTSEN. Mr. President, I have some concerns about the committee amendment that changes section 520 of the bill—H.R. 2519—and would appreciate it if the distinguished chair of the VA/HUD Appropriations Subcommittee would be willing to clarify the committee's intent.

As my colleague from Maryland knows, the Omnibus Budget Reconciliation Act of 1990 [OBRA 1990] contained provisions authored by my distinguished colleague, the junior Senator from Arkansas [Mr. PRYOR], that were designed to contain costs in the Medicaid Program. These provisions protect American taxpayers by enabling the Medicaid Program to obtain prescription drugs at prices as low as those offered to the best customers of drug manufacturers, including the Department of Veterans Affairs [DVA]. The law operates by providing Medicaid with rebates sufficient to ensure that the price paid by Medicaid is the best on the market.

Mr. President, last year's development of these provisions was a long and contentious process, requiring numerous compromises to address the concerns of the administration, the pharmaceutical manufacturers, the States, consumers, and health care providers—including the Department of Veterans Affairs—while achieving the savings agreed to in the budget summit.

During these deliberations, I raised with the summit negotiators my concern over the potential for cost shifting to other Federal agencies and I, therefore, insisted on the inclusion of certain provisions intended to preserve the ability of the DVA to negotiate favorable discounts on pharmaceutical products. Yet, even with these provisions, I am advised that the Department of Veterans Affairs has encountered difficulty in obtaining the discounts it believes are justified. While much of the evidence at this point is anecdotal, we have asked the General Accounting Office to study the matter further.

As I understand it, the purpose of the amendment offered by the distinguished Senator from Maryland is to provide further protections for the DVA against possible price increases.

Ms. MIKULSKI. That is correct. This amendment is needed to ensure that the DVA can continue to secure the favorable prices on pharmaceutical products that it has so effectively negotiated in the past. It would do so by excluding VA prices from the calculation of rebates under the Medicaid law, by requiring the Secretary of Veterans Affairs to attempt to renegotiate current contracts to obtain better prices, and by requiring the Secretary to report to Congress on these negotiations and on pharmaceutical cost increases incurred by the DVA since OBRA 1990 was enacted.

Mr. BENTSEN. I appreciate that clarification and share the concerns of the distinguished Senator from Maryland. The DVA plays a special role in our Nation's health care system by providing care to the millions of men and women who have served in our Nation's defense. Because of its special role, it is imperative that we protect the DVA's ability to deliver the highest quality health care. However, it is also important that we obtain for the American taxpayer the most reasonable prices for pharmaceutical products essential to that care.

At the same time, it is critical that the Medicaid Program retain its ability to provide cost-effective benefits to the many pregnant woman, infants, children, and disabled and elderly individuals who rely on Medicaid for their health care. Thus, I would like to inquire whether the amendment offered by the distinguished Senator will preserve the Medicaid Program's access to favorable pharmaceutical prices, as provided in last year's budget agreement.

Ms. MIKULSKI. Yes, it will. I share my colleagues' concern that Medicaid costs be contained and, unlike the provision in the bill as reported, this amendment does not amend the Medicaid statute.

I want to add another point, and that is, if the pharmaceutical manufacturers continue to impose the exponential price increases in the same fashion, the Senate would have to consider taking whatever steps are necessary to confront the problem.

Mr. BENTSEN. Finally, I wonder if our distinguished colleague, the Budget Committee chairman, Senator SASSER, would confirm my understanding about the budget scoring of this provision. It is my understanding that this amendment will not require offsetting reductions in entitlement programs or increases in revenues pursuant to the pay-as-you-go provisions in the Budget Enforcement Act.

Mr. SASSER. That is correct.

Mr. BENTSEN. I appreciate the comments of my distinguished colleagues.

PUBLIC HOUSING REPLACEMENT

Mr. CRANSTON. Mr. President, I would like to engage in a colloquy with the distinguished manager of this bill regarding the replacement of public housing that is demolished or sold.

Section 18 of the U.S. Housing Act of 1937 prohibits the Secretary from approving a PHA's application for public housing demolition or disposition unless the PHA has a plan for the replacement of each public housing unit. The section permits such 1-for-1 replacement to be provided in total or in part through: First, the acquisition or development of additional public housing units; second, the use of 15-year project-based assistance under section 8 or other Federal or State programs; or third, the use of 15-year tenant based assistance.

In recent years, replacement housing has been provided from two primary sources. First, appropriations acts have provided explicit funding for 15-year replacement certificates: 500 replacement certificates were provided in the fiscal year 1991 law; 500 in the fiscal year 1990 law and 333 in the fiscal year 1989 law. Second, a portion of funds made available for the development of incremental public housing units has been used to develop units to replace public housing lost through demolition or disposition.

I have mixed views about the current system for replacing public housing. I support giving public housing authorities the flexibility to choose from a variety of options in meeting the replacement requirement. I am concerned, however, by the use of incremental public housing development funds—nominally appropriated to expand the supply of public housing—for purposes of meeting the replacement requirement. I believe we should take a truth-in-budgeting approach that would provide separate funding for the development of replacement public housing.

The committee bill provides funding for the development of incremental public housing units—without recognizing that a portion of these funds will be used to replace public housing units that are lost through demolition or disposition. The absence of funding for section 8 replacement certificates will, in fact, make public housing development the only source of funds available to meet the replacement mandate in fiscal year 1992.

Our current situation is a sad reflection of the inadequacy of HUD's reporting system on public housing demolition and disposition. That reporting system should improve—as early as next fiscal year—when section 513(b) of the National Affordable Housing Act takes effect. Section 513(b) requires the Secretary to transmit to Congress, as part of each annual budget request, a report outlining the commitments that the Secretary has made to fund replacement plans under section 18 and specifying, by fiscal year, the budget authority required to carry out such commitments. My hope and expectation is that over time such reports—and other improvements to the Department's reporting system—will lead to separate appropriations for replacement public housing in annual appropriations acts.

I ask whether my distinguished colleage from Maryland shares my concern and will work with me to improve the funding system for public housing replacement—if not in the current appropriations bill than in next year's legislation.

Ms. MIKULSKI. I share the Senator from California's concern about the current system for appropriating funds to meet the public housing replacement mandate. I will work with the Senator first to improve the Department's reporting system on public housing demolition and disposition and then to provide separate explicit funding for these purposes in appropriations legislation.

SOUTHWARK PLAZA PROJECT, PHILADELPHIA, PA

Mr. SPECTER. Mr. President, I wish to express my support for the report language provided in the House VA, HUD, and Independent Agencies Subcommittee appropriation bill concerning the Southwark Plaza project in Philadelphia. I respect the arduous task that the esteemed chairperson of the subcommittee, Senator MIKULSKI, and the ranking Republican on the subcommittee, Senator GARN, faced in addressing the various issues and requests before the subcommittee, and I commend them for their work. Nevertheless, I am concerned that the success of the Southwark Plaza project, in terms of increased affordable housing, may be further impaired unless report language is provided to allow HUD to assist this project.

Mr. President, the Southwark Plaza housing project, located in South Philadelphia, is a combination of high-rise towers and low-rise housing units that demonstrate many of the failures created by well-intentioned policies of the 1960's. The building and the units have greatly deteriorated physically. The design has encouraged uncontestable vandalism. The efforts, Mr. President, of the Philadelphia Housing Authority to create safe, decent, and affordable living in this public housing project is, I am informed, seriously challenged by circumstances beyond its control.

I further understand that the neighborhood surrounding Southwark is one where property values have increased consistently over the last few years. It is a gentrifying community of brownstone homes and urban boutiques occupied by a mix of young professionals and well-established seniors who have lived in the area for years. It is a neighborhood improving, and a neighborhood which generally embraces the redesign and the rehabilitation planned for Southwark.

But, Mr. President, Southwark faces difficulty. I am informed the difficulty exists because of changes made by the Department of Housing and Urban Development [HUD] in funding formulas in the now popular Major Reconstruction of Obsolete Projects [MROP] Program. I am informed that in 1987, HUD approved Southwark for rehabilitation under the then-newly created MROP program. This approval was based on the Comprehensive Improvements Assistance Program [CIAP] formulas which allow only 69 percent of the total development cost of a project to be funded with Federal money.

I am further advised that by 1990 it became evident that flows in many projects funded under MROP prohibited completion of those projects under the CIAP funding levels. HUD thereby changed the funding guidelines to adequately fund major reconstruction of MROP projects. Today, Mr. President, the estimated grant for a MROP project must be at least 70 percent, but not more than 90 percent, of the total development cost of the project. I am informed that HUD has not made these guidelines retroactive for projects approved for funding under MROP prior to 1990, such as Southwark Plaza.

Mr. President, Congress authorized the Major Reconstruction of Obsolete Projects program with the stated intention that it would be treated in the same manner as the public housing development program for new construction. The formulas for funding were to be identical. However, I am informed that HUD has unilaterally imposed cost limitations inconsistent with the intentions of Congress as outlined in the authorizing legislation which created MROP. Moreover, Congress intended MROP to fund totally failed sites. Southwark Plaza is a totally failed site. It is deserving of adequate funding premised on 1990 funding guidelines.

Mr. President, I ask that the conferees support the language contained in the House VA, HUD and Independent Agencies appropriations bill for fiscal year 1992, which directs HUD to fund the Southwark Plaza project at current 1990 levels. Without this direction, HUD will be unable to grant the necessary resources for the proper rehabilitation of the Southwark Plaza project, which is earnestly sought by the Philadelphia Housing Authority, the South Philadelphia neighborhood, the project's residents, and the more than 500 prospective families who would occupy the newly rehabilitated project.

Mr. President, I look forward to working with the conferees on this important project for Philadelphia.

NATIONAL AFFORDABLE HOUSING ACT

Mr. MACK. Mr. President, I strongly object to the language in this bill which changes the HOME matching requirements. The change represents a severe policy mistake that threatens the future of the HOME program, which was established under the National Affordable Housing Act.

As a conferee to the National Affordable Housing Act, I can assure you the match issue was well deliberated and resolved. The authorizers never intended the match be waived. The waiver undermines the whole HOME Program.

For more than 3 years in working on the National Affordable Housing Act, we have been talking about a partnership. With the partnership came the match. By waiving the match, the partnership falls apart. It is an outrage that the Senate has allowed this to happen.

As I said, the essence of the HOME program is the idea of a partnership between the Federal Government and the States/localities to provide low-income housing for the poor. In that spirit, HOME was designed as a matching grant program; the Federal Government would at least double every State/local dollar spent for low income housing.

For example, if a community chose to lightly rehabilitate older housing or offer vouchers to the poor, HOME would provide a 4-to-1 match; if the community chose new construction, HOME would provide a 2-to-1 match.

However, the Appropriations Committee—in response to the current financial strain in the cities and states—waived the match for 1 year. But, as a July 10 New York Times editorial suggests, the appropriator's "compassion is shortsighted. HOME's political popularity is due, in part, to the significant local commitment it requires. Waiving that commitment—even before the program gets started—could erode future support." Mr. President, I ask unanimous consent to have this editorial printed in the RECORD at this point.

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

HOUSING THE POOR, SENSIBLY

Low-income housing is in short supply, and state and local governments are in no shape to help. That makes vital today's vote by a Senate subcommittee on HOME, a new low-income housing program. HOME authorizes block grants to states and localities on a matching basis. And it gives authorities great flexibility to use the money for rehabilitation, construction or rental assistance.

The question before the committee is how much to spend on HOME. The House has approved $500 million, barely enough to get started. Rehabilitation can cost $25,000 or more per unit; new construction $60,000 or more. Even after state and local authorities chip in their share, the House allocation won't make much of a dent.

To make a meaningful start, Congress would need to allocate at least $1 billion, and with any luck more. That would generate almost $100 million for New York City.

The money wouldn't be wasted. Last year's housing legislation compels local authorities to put together comprehensive plans for low-cost housing. In New York, city housing agencies, private corporations and nonprofit groups have begun the process. Community-based development groups have already established an impressive record of rehabilitating—and maintaining—low-cost housing in rundown neighborhoods. With an adequate infusion of HOME funds, their yeoman efforts to reclaim abandoned buildings, block by block, would have a chance to prosper.

The subcommittee will also take up local matching rates. The law calls for at least a 25 percent contribution from local authorities for rehabilitation and 50 percent for new construction. But because of the fiscal crisis afflicting city and state governments, many in Congress proposed temporarily waiving the matching shares.

Their compassion is shortsighted. HOME's political popularity is due, in part, to the significant local commitment it requires. Waiving that commitment—even before the program gets started—could erode future support. Better to reduce, but not waive, the local obligation. That way the program will prosper, and Congress will deliver a big boost to cities and town struggling to house their poor.

Mr. MACK. There are three major reasons why I believe the committee's waiver of the match is wrong.

First, and most importantly, the waiver of the match would mean that 32,000 low-income families will not be served. According to HUD, waiving the match for fiscal year 1992 would mean that only 123,000 families will be served versus 155,000 with the match. (See charts A and B.)

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

HOME INVESTMENT PARTNERSHIPS PROGRAM, FISCAL YEAR 1992 SENATE APPROPRIATIONS COMMITTEE MARK

With match in place

Appropriation	$2,000,000,000
Block grants	1,955,000,000
Technical assistance	11,000,000
CHDO TA	14,000,000
Lead-based paint	0
Indians	20,000,000

New construction: 15 percent of $1,955,000,000 = $293,250,000 × 1.5 (match) = $439,875,000.

Program level of $439,875,000 divided by $80,000 per unit = 5,498 units.

Substantial rehabilitation: 10 percent of $1,955,000,000 = $195,500,000 × 1.33 (match) = $260,015,000.

Program level of $260,015,000 divided by $50,000 per unit = 5,200 units.

Moderate rehabilitation: 50 percent of $1,955,000,000 = $977,500,000 × 1.25 (match) = $1,221,875,000

Program level of $1,221,875,000 divided by $15,000 per unit = 81,458 units.

Tenant-based assistance: 25 percent of $1,955,000,000 = $488,750,000 × 1.25 (match) = $610,937,500.

Program level of $610,937,500 divided by $9,700 per unit for two years = 62,983 units.

Total Program Level: $2,532,702,500 (including Matching Funds). Units: 155,139.

No matching

Appropriation	$2,000,000,000
Block grants	1,955,000,000
Technical assistance	11,000,000
CHDO TA	14,000,000
Lead-based paint	0
Indians	20,000,000

New construction: 15 percent of $1,955,000,000 = $293,250,000 × 1.0 (no match) = $293,250,000.

Program level of $293,250,000 divided by $80,000 per unit = 3,666 units.

Substantial rehabilitation: 10 percent of $1,955,000,000 = $195,500,000 × 1.0 (no match) = $195,500,000.

Program level of $195,500,000 divided by $50,000 per unit = 3,910 units.

Moderate rehabilitation: 50 percent of $1,955,000,000 = $977,500,000 × 1.0 (no match) = $977,500,000

Program level of $977,500,000 divided by $15,000 per unit = 67,167 units.

Tenant-based assistance: 25 percent of $1,955,000,000 = $488,750,000 × 1.0 (no match) = $488,750,000.

Program level of $488,750,000 divided by $9,700 per unit for two years = 50,387 units.

Total Program Level: $1,955,000,000 (no matching). Units: 123,130.

Mr. MACK. Second, as a response to current fiscal problems in the cities and states, the waiver fails to provide any relief for fiscal year 1992. The benefits of the waiver would not take place until the end of fiscal year 1993.

Third, by not requiring a local match, the waiver undermines incentives that states and communities have to prioritize housing activities.

Under HOME, recipients are given an automatic administrative cost credit equal to 7 percent of the HOME grant toward their match. Since HUD estimates that most jurisdictions will not have expended more than 10 percent of their HOME grant by the end of fiscal year 1992, the most a community would have to contribute is 5 percent—if they chose new construction. The committee waiver, however, applies to the entire fiscal year 1992 HOME allocation, not simply what is drawn down in fiscal year 1992. States will begin to benefit from the waiver at the end of fiscal year 1993. (See charts C and D.)

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

CHART C.—MATCH REQUIRED UNDER HOME PROGRAM: LIGHT REHAB/TENANT-BASED ASSISTANCE

City A	HOME grant allocation	Funds drawn for light rehab/ tenant-based	Administrative credit	Match local contribution	Total match
Fiscal year:					
1992	$1,000,000	$100,000	$25,000	0	$25,000
1993	NA	200,000	45,000	$5,000	50,000
1994	NA	200,000	0	50,000	50,000
1995	NA	250,000	0	62,500	62,500
1996	NA	250,000	0	62,500	62,500
Total	1,000,000	1,000,000	70,000	180,000	250,000

Source: HUD estimate.

CHART D.—MATCH REQUIRED UNDER HOME PROGRAM: NEW CONSTRUCTION

City A	HOME grant allocation	Funds drawn for light rehab/ tenant-based	Administrative credit	Match local contribution	Total match
Fiscal year:					
1992	$1,000,000	$20,000	$10,000	0	$10,000
1993	NA	170,000	60,000	$25,000	85,000
1994	NA	300,000	0	150,000	150,000
1995	NA	310,000	0	155,000	155,000
1996	NA	200,000	0	100,000	100,000
Total	1,000,000	1,000,000	70,000	430,000	500,000

Source: HUD estimate.

Mr. MACK. Therefore, for virtually every community, the automatic 7 percent administrative costs credit will cover their entire matching requirements in fiscal year 1992. Any further matching requirements would come due in the outyears, at which time economic recovery will presumably have set in.

For example, city A receives a HOME grant allocation of $1,000,000. According to HUD estimates, city A will only expend 10 percent, or $100,000, of the HOPE grant by the end of fiscal year 1992. City A chooses to use the grant funds for new construction which has a 2-to-1 match requirement. City A's match in fiscal year 1992 is, therefore, $50,000. The 7 percent administrative cost credit, or $70,000, would more than cover the city A's match in fiscal year 1992.

In addition, the HOME Program already provides the Secretary the discretionary authority to reduce matching requirements when he determines that a reduction is necessary to allow States/cities to participate in the program.

Under this authority, the Secretary may reduce the match by 75 percent in the first year of a participating jurisdiction, 50 percent in the second year and 25 percent in the third year.

The House, I believe, acted responsibly by not waiving the match. I urge the Senate conferees to the bill to accept the House language on the HOME match and reject the Senate's waiver.

IN SUPPORT OF GAO STUDY

Mr. DECONCINI. Mr. President, let me begin by saying that I was prepared to offer an amendment in the full Appropriations Committee markup of the VA, HUD appropriations bill that would have delayed the implementation of the Department of Housing and Urban Development [HUD] Federal Housing Administration [FHA] minimum mortgagor equity rule which went into effect on July 1. The minimum mortgagor equity rule restricts the amount of closing costs that can be financed in an FHA single-family mortgage to 57 percent. My amendment would have also required the Congressional Budget Office to conduct a study of the financial stability of the mutual mortgage insurance fund [MMIF] in order to assess whether the implementation of the HUD closing cost financing limitation rule is prudent at this time given other equity reforms already in place prior to July 1.

Mr. President, I firmly believe that rescission of the 57-percent rule is still necessary, but I have attempted to satisfy the concerns of my colleagues on the Appropriations Committee that believe my amendment would have destabilized the FHA single-family fund.

In short, HUD and the Office of Management and Budget [OMB] contend that restricting financeable closing costs will increase FHA home buyer equity. I disagree. Closing costs have no effect on borrower equity. I assert that closing costs are the expenses incurred when transacting the purchase of a house: lawyers fees, title search, and so forth; none of which involves a direct equity investment in the house. Not allowing the buyer to finance his or her closing costs does change the loan-to-value ratio for that loan, but does not expose the MMIF to any greater potential loss.

Quite the contrary, my estimation is that restricting closing costs will only work against stabilizing the fund. I contend that the FHA fund will lose far more as a result of implementation of this rule than OMB and HUD assume the new rule will gain in added new revenues. It is my also view that the program will no longer be affordable to many potential low-income home buyers because of greater out-of-pocket cash requirements. FHA will not be an equitable alternative to private mortgage insurance for the higher income good risk borrowers who are very important to the stability of the fund.

The effect of losing the low end borrowers who can no longer afford to use FHA and the high end borrowers who will take their business to private mortgage insurance companies will be extremely detrimental to the MMI fund. These upper end borrowers are FHA's least risky loans, and they will pass up FHA mortgage insurance for a better deal with a private insurance provider.

Consequently, I fear that the administration's estimates of the new MMIF premiums which will be gained because HUD implemented the closing cost limitation are too optimistic. I fear FHA will lose money, the single-family fund will get an undeserved black eye and public confidence in FHA will wane.

Mr. President, even though I feel very strongly about the need to rescind the 57-percent rule, I am nevertheless willing to withhold further action until an independent analysis of the FHA mutual mortgage insurance fund [MMIF] is conducted by the General Accounting Office [GAO]. This compromise amendment requires that GAO develop its own economic model of the FHA MMIF. In doing so, it is expected that the GAO will examine all relevant data and economic assumptions which formed the foundation for HUD and OMB to conclude that the implementation of the closing cost limitation rule was necessary to meet the capital ratio requirements contained in the 1990 Housing Act. And lastly, GAO is specifically directed to consider several factors which may not have been fully considered in other existing economic studies and models.

Mr. President, I wish to thank my colleagues, especially the distinguished managers of the bill, Senator MIKULSKI and Senator GARN, for their assistance and patience with this very important matter. I also would like to thank two other members of the Appropriations Committee who also sit on the appropriate authorization subcommittee, Senator D'AMATO and Senator GRAMM, and their staff, for their cooperation in ironing out a fair compromise for all concerned.

Mr. BYRD, Mr. President, the measure we are about to vote upon provides necessary funding for the Department of Veterans Affairs, the Department of Housing and Urban Development, the National Aeronautics and Space Administration, the Environmental Protection Agency, the National Science Foundation, the Federal Emergency Management Agency, the FSLIC Resolution Fund, and other independent agencies, boards, commissions, offices, and corporations. This bill is within its 602(b) allocation for both budget authority and outlays.

I wish to commend Senator MIKULSKI, the very able chair of the subcommittee. She has done a remarkable job on this very difficult piece of legislation, and I applaud her fine work and dedication to this bill. I also commend Senator GARN, the ranking minority member of the subcommittee, for his usual hard work and diligence.

I also complement both the majority and minority staff for their fine work on the bill: Kevin Kelly, Carrie Apostolou, Juanita Griffin, Stephen Kohashi, and Dona Pate. These dedicated professionals have worked many long hours to get this measure before us and passed.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 2519), as amended, was passed.

Ms. MIKULSKI. Mr. President, I move to reconsider the vote by which the bill as amended, was passed.

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

The motion to lay on the table was agreed to.

Ms. MIKULSKI. Mr. President, I move that the Senate insist on its amendments to H.R. 2519, and agree to a conference requested by the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

The motion was agreed to; and the Presiding Officer [Mr. DECONCINI] appointed Ms. MIKULSKI, Mr. GARN, Mr. LEAHY, Mr. D'AMATO, Mr. JOHNSTON, Mr. BOND, Mr. LAUTENBERG, Mr. FOWLER, Mr. NICKLES, Mr. KERREY, Mr. GRAMM, Mr. BYRD, and Mr. HATFIELD conferees on the part of the Senate.

NATIONAL VOTER REGISTRATION ACT FOR FEDERAL ELECTIONS

THE "MOTOR VOTER" BILL

Mr. DOLE. Mr. President, you do not need to be an election expert to realize that voter turnouts is at an all-time low. In 1988, for example, barely 50 percent of all eligible voters went to the polls—the lowest percentage in more than 40 years. Participation in midterm elections is even lower, down to about 34.4 percent in 1990.

Without a doubt, these are disturbing trends. But they are trends that S. 250, the so-called motor voter bill, will do nothing to reverse.

Unfortunately, low voter turnout has less to do with obstacles to voter registration and more to do with other factors—factors like the lack of competitive congressional races, the lackluster messages of our Nation's politicians, and the frustration of many citizens who feel that their votes simply do not make a difference on election day.

S. 250 will correct none of these problems. It will not make congressional races more competitive. It will not restore voter confidence in the electoral system. It will not guarantee high turnouts on election day.

But it will open the door for rampant fraud. And it will federalize an activ-

ity—voter registration—that the individual States have successfully performed for decades.

THE POTENTIAL FOR FRAUD

Mr. President, simply put, S. 250's mail registration procedures are a public invitation for corruption.

Just fill out a form, mail it in, and you are registered to vote. It is that simple.

There is no notarization requirement. No attestation requirement. No verification of identity or citizenship.

But there will be plenty of fraud. That is guaranteed.

UNFUNDED MANDATES

S. 250 would also impose significant unfunded costs on the States at a time when 32 of these States are running budget deficits.

According to estimates prepared by 10 States—Alaska, California, Florida, Illinois, Kansas, New Jersey, New York, South Carolina, Oklahoma, and Virginia—the total cost of complying with S. 250's requirements would exceed $87 million. The total cost for all 50 States would obviously be much higher.

Unfortunately, S. 250 says nothing about how the States should finance the costs of these new, burdensome requirements.

It is voter registration "sticker-shock:" the Federal Government mandates. And the States pick up the tab.

AN ALTERNATIVE

Mr. President, earlier this month, I joined my distinguished colleague from Alaska, Senator TED STEVENS, in introducing an alternative to S. 250.

The alternative would authorize a total of $25 million over 3 years in grants and an incentive for States to implement improved voter registration procedures.

Like S. 250, these procedures would allow registration at State Departments of Motor Vehicles, registration by mail, and registration at Federal and State government agencies.

But unlike S. 250, the implementation of these procedures would be completely voluntary.

The procedures would also remain subject to tough, antifraud provisions already on the books in most States.

In addition, the alternative recognizes that any liberalization of voter registration procedures must be accompanied by tougher penalties for public corruption. As a result, the alternative "beefs up" the penalties for such crimes as voter intimidation and ballot falsification.

CONCLUSION

Mr. President, many State governments have conducted very successful programs to make voter registration easier for all Americans.

In my home State of Kansas, for example, mail registration—accompanied by tough verification requirements—has been in effect since 1976. Other States have since followed Kansas' lead.

With a track record on voter registration, the States now need a helping hand from Washington.

They do not need another Federal mandate. And they do not need the iron fist of S. 250.

Mr. President, I have received letters from the National League of Cities, the National Association of Towns and Townships, and the National Association of Counties—all expressing their support for the alternative and their opposition to S. 250.

I ask unanimous consent that these letters be printed in the RECORD.

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

NATIONAL LEAGUE OF CITIES,
Washington, DC, May 30, 1991.

Hon. ROBERT DOLE,
Senate Minority Leader, The Capitol, Washington, DC.

DEAR MR. LEADER: I am writing on behalf of the public elected officials of the Nation's cities and towns in support of your proposed alternative, S. 921, to establish national voter registration procedures for Presidential and congressional elections.

The Nation's municipal public elected officials support efforts to enhance registration of more Americans to vote, but we oppose Federal initiatives which mandate significant new costs for local governments—unless such proposed mandates include reimbursement funds.

The version reported by the Senate Rules Committee, S. 250, would impose new and unfunded Federal mandates on an activity traditionally reserved to elected State and local governments. It would require States and local governments to either raise taxes or reduce other services to meet Federal goals and objectives. At a time when the Federal Government has adopted a pay-as-you-go philosophy, we believe it is only fair that such a standard should apply to mandates on other levels of government—even though it is uncertain—at best—that these changes would result in any increased voter participation.

In contrast, your proposal, the National Voter Registration Enhancement Act of 1991, would offer each State an incentive and would impose substantial penalties to help combat fraud and corruption in Federal elections. It would prohibit the Federal Government from mandating a State or municipality to require enhanced voter registration. Consequently, it would avoid interference in State and municipal authority, but would offer a voluntary means to encourage greater State and local registration efforts.

We believe your efforts are a responsible alternative, consistent with an effort to work in partnership with State and local governments. We appreciate and support your leadership.

Sincerely,

SIDNEY J. BARTHELEMY,
President, Mayor, New Orleans.

NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS,
Washington, DC, June 18, 1991.

Hon. ROBERT DOLE,
Minority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR DOLE: I am writing on behalf of the 13,000 local governments represented by NATaT, the National Association of Towns and Townships, in support of S. 921. Your continued understanding of the problems faced by small local governments in implementing unfunded mandates is greatly appreciated.

NATaT's members are from mostly small, rural communities nationwide. They are typical of the Nation's 39,000 general purpose local governments, 78 percent of which serve communities with less than 5,000 residents and half of which are communities with less than 1,000 people. Many of the local elected officials in these communities are the administrators of all elections in their jurisdictions. They have firsthand experience with the strengths and faults of voter registration.

NATaT is very supportive of voter registration efforts. In fact, township governments were founded on the principle of citizen participation. However, the process of registering voters must be one that is manageable and affordable for local governments. S. 250 is neither. It imposes new costs and confusing procedures for which local governments will pay a high price. We have heard very strongly and loudly from local government officials in opposition to S. 250.

In contrast, your legislation addresses these concerns by making the program voluntary and providing funds. By encouraging voluntary participation, you avoid interference with successful programs and leave states the flexibility to create innovative programs to address their specific needs. The penalties S. 921 would impose to prevent fraud and corruption are also necessary to ensure that the registration process is legitimate.

We hope that your colleagues in the Senate will join in support of S. 921. It is a sensible approach consistent with the partnership that the Federal and local governments should have. Thank you for your leadership on this important issue.

Sincerely,

JEFFREY H. SCHIFF,
Executive Director.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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 the motion to proceed to the consideration of S. 250, a bill to establish national voter registration procedures for Federal elections, and for other purposes:

Wendell Ford, Jeff Bingaman, Daniel K. Akaka, Max Baucus, Timothy E. Wirth, J.R. Biden, Jr., George Mitchell, Richard Bryan, Bob Kerrey, J. Lieberman, Pat Leahy, Brock Adams, Daniel K. Inouye, Bill Bradley, John F. Kerry, Frank R. Lautenberg.

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 motion to proceed to the consideration of S. 250, the National Voter Registration Act, shall be brought to a close?

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

The assistant collective clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

The PRESIDING OFFICER (Mr. HARKIN). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 59, nays 40, as follows:

[Rollcall Vote No. 140 Leg.]

YEAS—59

Adams	Exon	Lieberman
Akaka	Ford	Metzenbaum
Baucus	Fowler	Mikulski
Bentsen	Glenn	Mitchell
Biden	Gore	Moynihan
Bingaman	Graham	Nunn
Boren	Harkin	Pell
Bradley	Hatfield	Reid
Breaux	Heflin	Riegle
Bryan	Hollings	Robb
Bumpers	Inouye	Rockefeller
Burdick	Jeffords	Sanford
Byrd	Johnston	Sarbanes
Conrad	Kennedy	Sasser
Cranston	Kerrey	Shelby
Daschle	Kerry	Simon
DeConcini	Kohl	Wellstone
Dixon	Lautenberg	Wirth
Dodd	Leahy	Wofford
Durenberger	Levin	

NAYS—40

Bond	Gramm	Pressler
Brown	Grassley	Roth
Burns	Hatch	Rudman
Chafee	Helms	Seymour
Coats	Kassebaum	Simpson
Cochran	Kasten	Smith
Cohen	Lott	Specter
Craig	Lugar	Stevens
D'Amato	Mack	Symms
Danforth	McCain	Thurmond
Dole	McConnell	Wallop
Domenici	Murkowski	Warner
Garn	Nickles	
Gorton	Packwood	

NOT VOTING—1

Pryor

The PRESIDING OFFICER. On this vote, the yeas are 59, the nays are 40. Three-fifths of the Senators duly chosen and sworn not having voted in affirmative, the motion is rejected.

The Senator from Minnesota.

NATIONAL VOTER REGISTRATION ACT FOR FEDERAL ELECTIONS

Mr. WELLSTONE. Mr. President, I rise to speak about this vote that has just taken place on cloture.

Mr. President, the motor voter legislation sponsored by the Senator from Kentucky [Senator FORD], was a piece of legislation that would have brought about more democracy in our country and what happened here tonight was almost every single Republican voted against a piece of legislation which would have made it easier for citizens in this country to have registered and voted.

What did this legislation call for that they were so afraid of? This legislation said that when a man or woman went to register to pick up a driver's license what you would have would be something called motor voter like in Minnesota, driver's license form, voter registration form, available for citizens, makes no difference whether Republicans or Democrats, but it would make it easier for our citizens to register to vote. That is what a democracy is about.

We have motor voter in the State of Minnesota, a wonderful program. Many, many States have it. For some reason with the exception of three Republicans, the rest of the Republicans in this Chamber were afraid of a piece of legislation that would enable American people to register and vote, unbelievable.

What did the legislation of the distinguished Senator from Kentucky [Mr. FORD] call for? It called for agency-based registration, when men and women in our country regardless of State go into agency unemployment offices, food stamps, and whatever, what would happen? Staff in those agencies would have voter registration forms available and they would be able to fill out these forms.

Mr. President, the vote on the part of almost every single Republican here tonight, a vote I might add to simply filibuster this piece of legislation, was a vote against agency-based registration which would have enabled many of our most vulnerable citizens, people who are unemployed, low and moderate income from having access to registration and vote.

What was this vote all about? What were the Republicans afraid of? Afraid of registration by mail and by postcard?

Mr. President, I have to say here tonight—and I want to say it to every single citizen in this country who might be viewing at this moment—that our country has made great steps forward, but we have so far to go.

In the 1870's and in the 1880's, the United States of America had high rates of voter participation. But then after 1896, we passed some laws and rules and regulations that now many of us know were a mistake. Some of those were the poll tax and literacy tests and, in addition, we had the grandfather clause and other things that were so discriminatory.

From 1896 and thereabouts, all the way, I say to Senator FORD, until 1965, all those years we had those laws on the books and then we passed the Voting Rights Act of 1965 and how proud we were as a Nation that we passed that legislation which would make sure that there was no discrimination, which would make sure that people were able to register and vote. Such an important piece of legislation.

Now in 1991, we have a situation in our country where 75 million Americans are not registered to vote. We know among the people who do register to vote—which is only 50 percent in a Presidential race—we know that of the people who do register to vote, 85 percent of them vote. But half the population, 50 percent, did not vote in the last Presidential election.

Why? Is it because people are apathetic and do not care? That, Mr. President, is not the main reason. The main reason is that we stand out with the lowest record of voter participation of any democracy—really at the very bottom—in the whole world. We have a system that makes it so difficult for people to register and to vote. That is what the Senator from Kentucky was trying to do with this legislation.

What did the legislation say? What the legislation said—and it would have been such a step in the right direction—is that no longer would a citizen in a State have to figure out how, when, and where to vote. In all too many States when you try to register to vote, you cannot register during the weekend, you cannot register sometimes at noonday during workdays. Working people have a very difficult time registering.

In many States, there is no mail-in. So you have to figure out where to go to register to vote. All too often you do not know where it is. All too often you have to travel 70 or 80 miles in order to find that place.

So, Mr. President, what we have is all these rules and regulations that vary State by State, and in all too many places in our country, we impose enormous difficulties on people so that we make it so difficult for them to register to vote. And it is discriminatory. It especially leaves out the working people.

This piece of legislation, this motor-voter registration, this agency-based bill, this bill that called for registration by mail-in, was a piece of legislation that built on the Civil Rights Act of 1965 in the United States of America. It was a piece of legislation that would have expanded democracy in the United States of America.

It should have not been called motor voter. It should have been called pro-democracy legislation. It should have been called the Voting Rights Act of 1991.

I want to say to my Republican colleagues, it is very, very difficult for me to understand, and I think, quite frankly, for people in this country to understand, why in the world would you vote against moving on and having real debate and discussion on a piece of legislation that would have enabled citizens to register when they go to the Bureau of Motor Vehicles to register, when they go to an agency, to be able to register by postcard? Why do you want to make it so difficult for people to register to vote?

We know that in the States that have motor voter and States that have agency-based registration, it works. We know that those States have higher levels of participation. We know in our country we do not have near enough people involved in politics. I thought—how naive it is of me to think so—I thought, as a U.S. Senator, that all of us in the U.S. Senate, whether we were Republicans or whether we were Democrats, were all interested in citizens being involved. I thought we wanted citizens to register to vote. I thought we were interested in more voter participation. I thought we were interested in more democracy.

That is not what the Republicans are interested in, Mr. President. This was, I am sad to say, a straight party vote. Three Republicans were willing to vote for a piece of legislation that would have made it easier for citizens in the United States of America to be able to register and to go out and vote. Is that not what this is all about? Should not every single Senator be promoting that, I ask my colleagues?

I hope to have some discussion about this tonight. What were you afraid of? Why were you afraid for more people in the United States of America to register and vote? What are you afraid of? Are you afraid of democracy? Do you not want working people to come out and vote? Do you not want young people to be able to register and vote? Do you want us to continue to have elections where only 50 percent of the population votes in a Presidential election and far fewer vote in congressional races and State and local races?

Do you want the United States of America to be rock bottom among democracies in voter participation? Do you want to continue to have these voter registration laws which are so discriminatory and make it so hard for working people to register to vote?

What in the world are my colleagues on the other side of the aisle afraid of? I cannot imagine why they would not want the American people to be able to register and vote. I think people all across this country are going to understand this vote tonight.

We will come back to it again. And I think that what we will do in the U.S. Senate—obviously, not tonight—but we will reach a higher moment, we will be a body that lives up to good public policy. We will leave partisan politics aside. We will be a U.S. Senate that cares about citizens in this country and wants them to be able to register and vote, and we will do that by passing this piece of legislation that the Senator from Kentucky, Senator FORD, has introduced.

You might be able to kill a good idea tonight. You might be able to kill a voting rights bill tonight. You might to able to stop people from participating in politics tonight. You might be able to make it difficult for working people to register and vote tonight. You might be able to undercut democracy tonight.

But I want to say to my Republican colleagues, you will not be able to do that tomorrow; you will not be able to do that in the months ahead. We will pass this legislation. And when we pass this motor voter registration, and when we have agency-based registration, and when we have registration by postcard, we will be more of a democracy, Mr. President. We will see higher rates of participation, we will see more people interested in politics, we will see more people voting, and we will be better off as a Nation for it.

Tonight is only the beginning. We will not stop until we pass this legislation. I think for anyone who is interested in democracy—Republican, Democrat, or other—this could probably be as important a piece of legislation as could ever pass, and I certainly welcome my Republican colleagues in the future voting for a piece of legislation to make this a more democratic country.

I thank the Chair.

MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein.

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

EULOGY FOR EDWARD W. CLYDE

Mr. HATCH. Mr. President, I would like to pay tribute to my friend, Edward W. Clyde, who died yesterday in Salt Lake City at the age of 73. Ed was one of the West's premier water-rights attorneys whose contributions in the State of Utah will always be appreciated and remembered.

I enjoyed working with Ed and was constantly amazed by his knowledge, his strength, and his character. Ed was a fighter, and during his illustrious career, won many landmark decisions. I am proud to call him a friend, and I want to send my condolences to his wonderful family.

Ed was well-known in the West for his work on many far-reaching projects, including his involvement with the Central Utah project. Ed also worked on the Intermountain power project, located near Delta, UT. Knowing the importance of water to our beautiful, desert State, Ed also represented 1,700 farmers regarding water rights to the Bear River in northern Utah. He also worked to protect Utah's ownership of the Great Salt Lake.

Ed was born in Heber City in 1917 to L. Dean Clyde and Ardell Buhler. He married Betty Jensen on August 14, 1941, in Logan, UT. In 1939, he earned his undergraduate degree from Brigham Young University and in 1942, he graduated first in his class at the University of Utah law school.

In addition to his remarkable professional achievements, Ed also devoted much time to community service. For example, he served as chairman of the University of Utah's institutional council, on the University of Utah Hospital's board of directors, Utah oil and gas board, and the American Bar Association's water law committee.

Ed is survived by his wife, four children: Carolyn Mollinet, Susan Williams, Steven E. Clyde, and Thomas E. Clyde. He is also survived by 12 grandchildren and one great-grandchild.

Ed was a great friend of mine and I wanted to pay this tribute to him.

TRIBUTE TO ALPHA SMABY

Mr. WELLSTONE. Mr. President, Alpha Smaby was a trail blazer for women political activists in Minnesota and around the country. Today we mourn her passing at 81 in Minneapolis and we extend our condolences to her family and wish them the best.

Mrs. Smaby was a State representative from 1964 to 1968 at a time when there was only one other woman in the Minnesota Legislature. In part because of her pioneering work in politics, there are now 43 women in the Minnesota Legislature and the Speaker of the House is a woman.

She was a progressive, grassroots politician in the best tradition of Minnesota politics. She spoke out for what she believed in and she acted on her beliefs. She was a member of the League of Women Voters, the American Civil Liberties Union, the Governor's Commission on the Status of Women and the McCarthy for President campaign in 1968. She recently wrote a book on Minnesota politics.

Alpha Smaby earned the respect and admiration of Minnesotans of all political persuasions. She was honest, articulate, passionate and a voice for the disenfranchised. She was a terrific woman, a sensitive and courageous person and a wonderful mother and grandmother. We will all miss her greatly.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,315th day that Terry Anderson has been held captive in Lebanon.

THE NOMINATION OF BOB GATES

Mr. DOLE. Mr. President, yesterday's decision by the Intelligence Committee to postpone until mid-September its hearings on the nomination of Bob Gates to be CIA Director was, in my view, unfortunate.

In any event, what is important now is that all sides understand that Presi-

dent Bush, and those of us who support Mr. Gates nomination, are not going to stand by and see it done in by delay.

Mr. Gates has been nominated to be CIA Director. He has not been offered up as a victim for some parliamentary form of "Chinese water torture."

The Constitution gives to the Senate, not to the special prosecutor, the power to decide on the fitness of this nominee. We cannot put off doing our job and meeting our responsibility, on the phony premise that the special prosecutor must do his job first.

The Senate's been around here a little bit longer than the special prosecutor's office, and we do not operate on his timetable. If Mr. Walsh has relevant information on this nominee—and I very much doubt that he has except for information that would confirm Mr. Gates' integrity and truthfulness but if he does—then surely he and we can find some way for that information to be made available to the committee and to the Senate.

The Gates hearing is now scheduled for September 17. Barring some totally unforeseen development, it cannot slip any further.

Mr. Gates must be heard. Anyone who wants to make any allegations of wrongdoing by or unfitness of the nominee must stand up and say so out in the open, not in some mean-spirited leak to the media. And then we in the Senate must face up to our responsibility, and do our job.

COOPERATIVE TAX LEGISLATION

Mr. COCHRAN. Mr. President, I am pleased to join my colleagues, Senators DAVID BOREN and DAVE DURENBERGER, in introducing legislation aimed at clarifying the tax treatment of farmer cooperatives with regard to the treatment of gains or losses on the sale of assets.

Under this legislation, if a farmer cooperative can demonstrate as a matter of fact that the asset sold—such as a cotton warehouse, grain elevator, or other type of business asset—was used to facilitate business done for or with its farmer members, then it may treat such income as patronage sourced. Patronage sourced income required to be distributed to the cooperative's farmer members is included in their members' taxable income. With regard to nonpatronage sourced income, cooperatives are subject to taxation just as any other corporate income.

The "facilitative use" test is the same test that the courts have consistently applied in a number of similar cases to determine whether the income may be treated as patronage or nonpatronage sourced by the cooperative. Notwithstanding what the courts have held, the IRS continues to challenge farmer cooperatives on this issue. The result has been to subject farmers and their cooperatives with unnecessary, costly, and time-consuming litigation.

For this reason, legislation is urgently needed to clarify existing law and to provide guidance to both the industry and IRS in terms of how gains and losses on such asset sales may be treated.

This legislation is strongly supported by farmers and their cooperatives not only in my State of Mississippi, but all across the Nation. It also enjoys broad bipartisan support in both the House and the Senate and I am hopeful that Congress will be able to consider this legislation this year.

Thousands of farmers in my home State of Mississippi are members and owners of over 100 farmer cooperatives of all sizes which handle, process, and market a wide range of agricultural commodities produced in the State as well as provide needed production inputs—such as seed, fertilizers, and fuel—and other related services.

Through these farmer-owned cooperatives, farmers themselves are working together to compete more effectively in both the domestic and international marketplace in an effort to earn a fair return on their productivity and investment. As we look to the future in terms of increasing global competition and declining resources at the Federal level due to budget constraints, we need to be focused on ways to further enhance the abilities of farmers to meet such challenges.

For these reasons, I urge my colleagues who have not had an opportunity to do so, to join me in support of this important legislation.

MOTOR VOTER LEGISLATION

Mr. SIMPSON. Mr. President, I am here to assist in closing up the Senate, with my good friend from Kentucky. I certainly could not help but be aware of the comments of the junior Senator from Minnesota. I was reflecting that it, perhaps, has been a long week. Perhaps a little tiredness and fatigue entered into the deliberations. He speaks with great energy and vigor, which is his wont and his reputation, and I admire that. I kind of do that myself.

If you are looking for a good, partisan argument, this is just as good a place to start as any that I am aware of, because it is not a purely partisan issue. It was not a solid Republican vote. I had heard that referred to four times in the debate, and that is untrue. It is not a correct statement. So we should have the RECORD reflect that.

We all know partisanship. It is what we do here. We unsheath the partisan sword and we go to battle. But it has been most fascinating to me to hear the argument that this involved only partisanship presented with such passion, because it is my personal opinion that the reason people do not vote does not have anything to do, really, with registration. It has to do with the fact that there are so many "duds" running for public office.

There are so many deadly, dull people who run for public office that even people who work downtown will not go vote. They say, "why would I go vote for that guy, all he does is tell me exactly what I want to hear." And when I say, "How about this or that," he or she says: "You got 'er, my friend; we will give it to you."

It is that very essence of politics that has led us, now, to a debt limit which will be, in March 1993, $4.145 trillion. You can tell that one to your grandchildren, in the year 2020, after Medicare costs have overwhelmed America and health care costs have overwhelmed America to the extent of 20 percent of our gross national product—no one will argue the validity of those figures, and a Social Security system that we will not touch because there are so many demagog politicians in the world who say, "Do not worry about me, I will never touch it with a stick." Meanwhile you can ask the guy at the Social Security Administration in Baltimore to get his chart and determine what an individual has put into the Social Security System during his or her working lifetime? You will be surprised. Do not forget, this is not some elitist system. If you know about the replacement rate and the fact that the little guy gets more than the fat cat out of Social Security, you can total it up and find a person can put in $8,422 and then, during his or her retirement, can get it all back in the first 5½ years of the benefit period. You can imagine the return when that person's life expectancy is 10 to 13 years. And you ask us about responsibility? Those are just a few minor facts.

Let us get to the "motor voter." It is appalling for any thoughtful legislator to believe it is good public business to register people who are standing in line in any Federal building for any kind of service, or in the game and fish line to get a fishing license, if they do not care enough about democracy, when there are laws in every State which allow citizens the time to register to vote, and allow time off to go vote with no loss of salary or income. We Republicans are accused of having a strange view of democracy. I don't think so. It is called accountability. And sometime, somewhere, the people who vote ought to know what they are doing.

Maybe such accountability would give us a little better idea of where we should be going. I have heard of revisionist history. Now we talk about that a great deal. The people who started this country were elitists. Some were slave holders. We can go back and revisit that. They read Locke. They read remarkable philosophies, and they put together a Constitution and a Bill of Rights which the Senator from Minnesota cherishes as much as I do.

The reason people do not vote in America today is because of the quality of candidates. Who is going to run? Who is going to present themselves for office when they pick through the stack of records of your wives, and your children, and your background when you were 18 years old, or 15, whatever?

The other reason for voter apathy is because citizens do not believe their voice is being heard. They do not vote because they believe that the PAC's have captured the process, and the special interest groups have, too, and the unions also. They believe every special interest group in America is calling the shots. That is why they do not show up at the polls.

They say: "What does it matter when the whole system is so bad?" That is why we ought to pass a reasonable campaign reform bill. The Democrats are advocating a proposal, and we are also trying to enact a proposal. I hope we can get something.

I think the American people expect it. But I can tell my colleagues this bill is an extraordinary, almost hysterical and histrionic approach to something which certainly does not incorporate my ideals of democracy. When people are apathetic and do not respond, this bill is not the remedy. They do not even respond anymore to people who, as I have said, offer to give them everything they want. That certainly does tap the Treasury.

But just so we get this in some proper perspective the secretary of state of Wyoming is a Democrat, an elected Democrat, a lady, Kathy Karpan. She is a very bright and thoughful woman. She has been talking to me for months about this bill and she said: "Watch out for it. It is the worst legislation I have ever seen. It is the most appalling legislation to any secretary of state, and to the people who really do the registrations in America."

That is the way it is. If my colleague will look at the endorsements that have floated around a bit over the past days, we will find the election officers of the States do not support this. They are Democrats and Republicans alike. So let us make sure we get that point. Let us deal honestly and openly with fact.

Our fine Wyoming Secretary of State said,

> This is the worst legislation I can ever imagine. It would be chaotic for us. You are telling us what to do on the Federal level and you are not giving us a nickel to do it with.

That is our usual bent in this place. So, we are providing no money to accomplish this bills goals. This is legislation which usurps the States, in their totality, of a sacred right and that is the right to vote, and register the citizens of a State to vote.

So, it is easy to come to this floor—and I have been here 13 years and know something about how it works—and use a deft blend of emotion, fear, guilt or racism to advocate the passage of a bad bill. That makes this a very strange place to work. Sometimes the process is quite unattractive.

I do not know any racists in this place. Yet that is much of what we seem to hear about. It is argued that one party is more racist than the other with regard to civil rights issues. That is absurd.

Clarence Thomas now is a victim of racism in reverse. You have seen the Moon from both sides when you hear that one. That is where we are in America today. It takes thoughtful people, Democrats and Republicans in public service, to come along and police up after the people that allege such nonsense. It requires devoted public servants to do the legislating and participate in the hearings and drain the venom of emotion and the hype and hoorah out of that issue, and do something positive for the good of the American public. That is exactly what I hope to be here for, and that is precisely what most of us try to do.

I will conclude by adding one dimension. We Republicans really do not like seeing an election take place, when all of a sudden, the union special interests drive up to the edge of town and set up phone banks, and just really "crank it into democracy." It is rather repugnant to this cowboy from Wyoming, when, suddenly, under the guise of democracy, here they come and they set up the phone banks and they call people and say: Do you know that the evil Republican is the guy who took your Social Security?

And the response is: "I did not know that, for heavens sake."

Then they collapse at their dinner table and tell all their friends. Meanwhile, some goon is sitting out in the shack pouring that stuff out to a whole network of precincts and people throughout the area. We Republicans take a dim view of that. We take a dimmer view of soft money, which has also been referred to as "sewer money." It is how they try to hide political contributions. Some of those in the other party are very adept at that.

I come from a State that typically votes the largest percentage of its voters in the Nation. Many other States have excellent records, too. The reason they do is because they have good election laws, good registration laws, and active candidates on both sides of the aisle.

We have an able Democratic Governor, a fine man. We have a split type of government where we have some cabinet members who are Republican; not exactly a cabinet, but very similar. That is what it is in real-life America.

And then there is another thing we Republicans do not like. We do not like to vote tombstones. We really go into shock when we see people who have registered in certain areas of the United States, and there are 3 or 4 in one address, or 10, and then you go there and there is not even an address.

I cannot imagine anything more fraudulent, or that would give more of a fertile ground for the total fraud of our American electorate system than having some guy tooling around in his car, and his driver's license is all he needs to register in different localities. Or, better yet, all he has to show is that he bought a game and fish license, or was on some type of government assistance, and that is all he needs to do. You do not even have to raise your hand, sign an oath or affirmation—maybe you do—and you kind of grunt, and then you get a vote in the United States of America. That is not my idea of democracy in any possible sense.

So those are some of the things that concern me. I am a Republican who is not afraid to speak out on these issues. This bill is a total phony. I am not talking about the sponsors, who I respect deeply. And I am not talking about those who support this legislation. Nor, am I talking about anybody who voted in any way.

I am just saying to my colleagues that if they will talk with the election officials of every State, they will find they are appalled by this, unless—the key is unless—they have the money to do it. And we are not going to give them any money. There is no money to do this.

Who is to pay the States who are crying for the Federal Government to lay off them? Who is going to pay the States for the additional registration people to do this? I do not know. That has not been explained to me. But I can say, this one has been cooking for a long time. It was advocated by a very able Senator from Wyoming, Senator Gale McGee, a Democrat. He supported this when he was in the U.S. Senate. He was a splendid representative of our State.

It has been laying around here for 20, 30, 40 years. It would be the most destructive thing that I can imagine to sensible registration, and sensible government. Furthermore, it will not solve the problem of apathy in America. I can assure you that. People of America are fed up. It is our job to restore their confidence and their trust.

We surely do not do it with hype, hurrah, and demagoguery. Americans have that figured out. Anybody can say those things, but what do these guys do? How do they protect themselves? How do they get reelected? And we do things to get reelected. All of us have. Our Founding Fathers warned us against that process. They said once the people of America know they have access to the public Treasury and to the elected officials that will produce for any special interest, then this country is in deep difficulty. That is a para-

phrase, but it is very true. You see that every day.

If we are going to hear a total partisan assault in the evening hours, it would seem that the American people should hear, like Paul Harvey said, the rest of the story.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I had not intended to say anthing as it related to the so-called cloture vote on the motor voter registration bill. I am surprised at the remarks of my colleague from Wyoming. It appears that everything distasteful in politics, everything that is wrong with politics, he has just enunciated, and it all relates to one piece of legislation, the motor voter registration bill.

As to all the additional people who the registrars are going to have to put on, the point is, they will not have to put on any more. In fact, there is a reduction of $7 to $10 million in the cost annually, and a reduction in mail cost to them.

And you say there is no one out there for this bill. The secretaries of the State of Washington—I will get close to home—and the State of Oregon just passed the motor voter bill. The State of Minnesota has the motor voter bill. I can take secretaries of States, Governors, who have been here and testified. The secretary of the State of Washington is in this week attempting to help.

You say people are fed up. He got into that. He got to talking about sewer money. I thought we were talking about legislation. But if people are fed up, they are not fed up with Democrats; they are fed up with Republicans. It was $900 billion in debt when Ronald Regan came in. At the end of 8 years, at the end of 12, we will be $4 trillion in debt.

They say "Democratically controlled Congress." Any President who has a wet pen to veto and a third of the votes can do anything in this town he wants to. And that side of the aisle has a third of the votes, and you have a third of the votes in the House. All you have to do is threaten a veto.

The Republicans want accountability. Accountability for what? Let us start accounting. All you have to do is look at the figures: $900 billion to $4 trillion, and you are in control of the White House.

I just want to say I am a bit surprised at the onslaught received here. The Senator makes remarks I have never heard of. He talks about all these innuendoes and people saying things. Maybe he is in places I am not.

Talk about money. Republicans in the senatorial campaign committee at least 4 years ago, I believe under the former Senator from Minnesota, raised $85 million to help about a dozen or more incumbents and a few that were running. The Democratic senatorial campaign committee raised $12 million. Then we have all this money going into races, at least four, during that period that had expenditures against four Democratic Senate candidates. They won three of them. We only had one survive. He is here.

And voting tombstones; I do not know what this piece of legislation has to do with tombstones. We have grave stones, I guess. Tombstones is out West. Maybe they vote tombstones, but this bill does not encourage the use of tombstones. There are some States in this country that are modern. They have computers. They wipe their slates clean and have everybody reregister, and wind up with more on the rolls.

They say there is no teeth in this bill. I thought 5 years in the penitentiary was a tooth or two, anyhow, maybe not totally. Fraud, misrepresentation, all these things. But I have never had anybody come at me much harder than the Senator from Wyoming. He did not have to make it personal. I am the sponsor of the bill. He did not have to make it personal. He was.

And so, Mr. President, I thought we were going to close out tonight. Maybe we are going to close out. I do not want to close out a friendship, but we have gone pretty far here this evening accusing those who support this legislation with a lot of things which I believe are untrue.

I do not have staff here to shove me things to say and to read, but I am willing now, since the Senator has had his part and I have had a little bit of mine, to get on with the closing of the Senate for the evening.

Mr. SIMPSON. Mr. President, I think our friend from Minnesota might have a comment. We might hear that. I, too, have further comments. Indeed, so will, my friend, the Senator from Kentucky. I have been here for 13 years. No one can belt it around harder, in more partisan fashion than the Senator from Kentucky. I know of no one who can match him in the top of his game on pure, tough, hard politics.

It takes one to know one. I yield without losing my place on the floor, even in morning business, to hear what the Senator from Minnesota might have to say.

I certainly yield to the Senator.

Mr. FORD. The Senator can secure the floor in his own right.

Mr. WELLSTONE. I think I do have the floor in my own right.

The PRESIDING OFFICER. Does the Senator from Minnesota seek recognition?

Mr. WELLSTONE. Yes.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, just for the sake of what I think people in our country want to know, I would like to respond to a few of the comments of my colleague from the State of Wyoming.

I believe I heard the Senator from Wyoming mention the fact that his secretary of state was opposed to this bill and something to the effect that you could hardly find any state officials in favor of it, or something like that. We could go back over the record. I heard something very similar to that.

The Secretary of State of Arizona, the Secretary of State of Indiana, the Secretary of State, Mr. President, from your State, Iowa, the Secretary of State of Maine, the Secretary of State of Massachusetts, the Secretary of State of Minnesota, the Secretary of State of Montana—I could go on down the list, but I think perhaps the point is made.

I respect my colleague from the State of Wyoming, and I have a tremendous amount of respect tonight for him, for his courage to come out here and defend what I think is really a very difficult vote to defend, to be quite frank.

My distinguished colleague said that this was not a partisan vote. Unless I am wrong, and I tried to learn my arithmetic right, I believe there were a total of three Republicans who voted for cloture tonight, three Republicans, three Republicans who were willing to have a full debate and discussion about how we could in fact improve our voter registration laws in the United States of America.

Let me go on to say to my distinguished colleague from the State of Wyoming just one or two other things.

When my colleague says that we have a very "sensible system of registration," I think perhaps the reason he says that is because I know him to be someone who takes politics seriously and he cares about politics, and for that I respect him. But I think perhaps he has not really taken a very close look at the kind of voter registration rules and regulations that exist in our country. In perhaps close to half of the States of the United States of America, you have to figure out where to go in a county to register. And by the way, it is usually not called the board of registration. It can have all sorts of names. When in fact you have to drive 70 miles, when in fact the hours at which you can register are very limited and when in fact, therefore, it is very discriminatory toward working people, I do not think you can really call it a sensible system of registration. That was my point.

Now, I heard the distinguished Senator from Wyoming talk about the deficit and ticking time bombs, and I think the Senator from Kentucky responded to that, and I would agree there is much that we should be doing. Perhaps, I would say to the senator from Wyoming, we would be doing a lot more if more people were able to register and vote and maybe they would

vote different people into office, different Republicans, different Democrats, you name it.

My colleague said we have a sensible system of registration. It is not sensible when you do not know whether it is 25 days before election day or 32 days before election day or whatever number of days before election day and that information is not readily available. It is not difficult for someone who is a Senator, I want to say this to my colleague from Wyoming, who lives politics every day, maybe to figure all of this out, but for a lot of citizens it is very difficult. And as a matter of fact it becomes quite discriminatory.

Now, the Senator from Wyoming says that people are apathetic and they are apathetic because of the sorry lot of candidates, or something to that effect.

Again, I say to my distinguished colleague that for some reason there seems to be one particular group, when we look at what is this 50 percent hole in the electorate; it is disproportionately blue collar workers, it is disproportionately people of color, and it is disproportionately the young. I would think that my distinguished colleague from the State of Wyoming would want to see more participation of all of those citizens, of all the citizens in the country.

Let me be clear. What we are talking about is a piece of legislation introduced by Senator FORD, from Kentucky, which only tries to do one thing and do one thing well, and it is the same thing that, by the way, I want the Senator from Wyoming to know—and he can check this out—every single other democracy in the world does. What it does is it moves away from this system of personal periodic voter registration which is so confusing, so much bureaucracy—I know the Senator from Wyoming does not like that bureaucracy—and instead moves to a system that enables citizens of the United States of America, regardless of income, regardless of age, regardless of whether they live in some rural community far away from where they can register, the same right to register and vote.

Mr. President, in the State of Minnesota we call that more democracy. That is what this piece of legislation calls for, and that I think was why those who did not vote for cloture and did not want to discuss this or debate this cannot stop an idea whose time has come from becoming the law of the land in the United States of America.

Mr. SIMPSON. Mr. President, I deeply respect the Senator from Minnesota. As I say, he is a man of passion and vitality and he has taught courses on the Government of this country and its politics. He loves politics, I hunch, and so do I.

I will not detain the staff much longer, or my colleagues either. I think the Senator from Kentucky and I are going to close out at some point.

I come from a State, since my State has been brought into the debate, that also has a tremendous number of working people, a tremendous number of elderly people, a tremendous number of people with low incomes. They work in the oil patch, what there is left of it, or the uranium patch or what there is left of that, and they are miners and service workers. I will match distances with any other Senator in this Chamber as to how far you go to register to vote, with the possible exception of my colleagues from Alaska. My State has the highest registration among all the States in the United States. There is a reason for that. They do not find it difficult to go to a county courthouse or to a State-designated registration facility where all you have to do is give your name and your age and your address. The registrant says: "What district am I in?" The State registrar responds: "Just a moment, we will tell you. Precinct 25-1." "Thank you," and there you are. Not much more to it than that. And if that is egregious or abusive, then certainly I am missing something about democracy.

The folks in Wyoming like the administration of the election laws by our Secretary of State and we are quite pleased with that system. I cannot understand why someone would want to impose a Federal motor voter law upon the States, even though this bill does exempt some States.

So let the RECORD disclose too, that estimates of 10 States—and since States were mentioned here—Alaska, California, Florida, Illinois, Kansas, New Jersey, New York, South Carolina, Oklahoma, and Virginia, indicate that the total cost of complying with this legislation's requirements would exceed $87 million.

Mr. FORD. Mr. President, will the Senator yield for a question?

Mr. SIMPSON. Yes. I will.

Mr. FORD. How did they arrive at that figure? Is it just some figure they sent the Senator, because in the testimony from California their cost, with all charges—with even those charges they are now paying they added into that figure from California, which was I believe $20 million.

Mr. SIMPSON. Mr. President, these figures were sent to us by the States.

Mr. FORD. Mr. President, I ask unanimous consent that the testimony of the representative of the State of California from the Rules Committee be included in the RECORD.

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

STATEMENT OF MR. BERNHARD

Mr. BERNHARD. Thank you, Mr. Chairman. I am Tony Bernhard. I am the Yolo County clerk, and I am the associate chair of the Legislative Committee for the County Clerks Association. Our association has no argument with the general policy that is intended in the bill. We support all efforts to encourage voter participation and expand voter registration. Our concern is with the absence of adequate funding that is in the bill, and we are concerned that without substantial funding it may not be possible for us to ensure continued error-free handling of the election registration process in our State. We are concerned also that without adequate funding, without substantial funding, our local policymakers will be in a position of having to take funds from existing social services and basic public health and safety services in order to pay for this program.

The county clerk's estimate for the cost of operating this program annually in California is about $20 million. Let me review the components of that cost for your information.

The motor-voter component of the bill would require all of the people who are obtaining driver's licenses automatically to be registered to vote. There are 19 million driver's licenses issued in California. There are another 4.5 to 5 million ID cards that are issued. Those are renewed every four years. We are looking at a workload of about 5 million affidavits that would be coming in to local election offices every year. That works out to between 20,000 and 25,000 per day that will be flowing into these offices.

Our estimate is that for handling these forms the cost will be about $3.6 million, and that is based on a figure of the California Secretary of State reimbursement of 60 cents to counties for processing each voter registration card. That 60 cents basically allows us five minutes of staff time at about $6 an hour for clerical staff to review the affidavit, ensure that it is completely filled out, assign the precinct to it, do the data entry, in some cases to do microfilming and digitized scanning. That would be all that the Secretary of State's reimbursement would pay for.

If an affidavit is incomplete, in California we are not allowed to just throw it away. We are required to follow up with the voter individually and make sure that the information is completed. An incomplete application includes an application without a signature. We can wind up spending considerable time on each affidavit. Most counties figure that the costs for processing a registration affidavit is in the neighborhood of $1.50. The Secretary of State's reimbursement is conservative, but that is the figure we are using on the $3.5 million estimate for processing these forms.

We would also be required to send a voter notification card, a card to each voter who is registered, which we estimate would cost about $2 million. That would be 20 cents a card including postage, labeling, handling, printing of the card stock, et cetera. So the total costs for processing in California on an annual basis the five-million-plus affidavits which we would receive as a result of motor voter would be about $5.5 million. And these are county costs.

We would also have a cost of about $4 million that we anticipate for servicing the increased voter rolls that would result from this, not the existing voter rolls but the increased voter rolls. We would anticipate an increase of maybe 10 to 15 percent of increase in the voter registration in the State. And in California we provide sample ballots and ballot pamphlets to all voters before each election. In terms of printing, mailing, labeling, postage costs, we estimate about $3 per voter for servicing the voter rolls. This is pretty consistent statewide, according to a survey the clerks did during the last congressional session when we were studying the previous legislation. So we are looking at a $4 million cost for that.

We would also be forced to increase precinct costs, we anticipate at about $1.6 million annually. These precinct costs would go up because in California we are not allowed to have more than a thousand registered voters in any precinct. Given the anticipated increase in registration, we would expect an additional 2,000 new precincts in the State, each of which would require for any election four poll workers at $50 apiece, plus costs in recruiting those poll workers, costs in renting polling places, costs in recruiting new polling places as well. This doesn't include the start-up costs which would go for additional equipment like voting machines; ballot boxes, et cetera, the various clerical supplies, tables, et cetera, that go into each precinct. Although those are one-time start-up costs, there would be an annual depreciation and renewal/replacement of that equipment. We are anticipating about $1.6 million for additional precinct costs.

The purge provisions in S. 250 would add an additional $700,000 annually based on the additional requirements to send the forwardable purge card after we received our notice that a voter had moved. California currently sends cards to any voter that does not participate in an election, in a November election. And in the event that that card is returned as undeliverable by the post office—in other words, in the event that we receive notification by the post office that the voter had moved—we would then have to send this second forwardable postcard. We anticipate that that would go to about seven percent of the voters based on our historical record. Given an increase of, as we say, 10 to 15 percent, California would see about 15 million registered voters on our rolls, and we would have a cost of about $700,000.

We are looking at start-up costs among the counties, at the county level, of between $5 million and $10 million. Although it is an estimate and it would be a one-time cost, there is, of course, ongoing maintenance and replacement of that equipment that is provided for staff and computer hardware. That is undetermined.

These costs don't include figures for the address updates that the Department of Motor Vehicles would be processing. At the current time, the Department of Motor Vehicles in California does not keep records for the procedures for updating their files. What they do, if someone changes their address on a driver's license, they just key in the driver's license number, it comes up on the screen, they change the address, and toss the letter away or the form away. So they don't keep records on that, although estimates from their staff, from their management, indicate that as much as 25 to 30 percent of DMV time is spent doing that. So we would anticipate some additional affidavits coming to the counties. The general overall county cost then is about $11 million annually.

State costs: The Department of Motor Vehicles estimates $5 million annually to gather and mail these affidavits to a central location for the California Secretary of State. That would be an annual cost and would not include the basic start-up costs and retooling, which could be substantial if an election form designed by the Federal Elections Commission did not accommodate the department's new method of taking pictures and digitizing the signatures, et cetera, for their driver's licenses. Their most recent bid for retooling all the field offices was $30 million. I am not with DMV. That is just what they tell me.

The Secretary of State estimates an annual cost of about $2 million for processing the 20,000 to 25,000 affidavits per day. That would include staff, postage, space, premises, et cetera. The total cost then would be $20 million annually, and as I say, this doesn't include the address updates from the DMV. It would not include the increased costs for processing provisional ballots that would necessarily increase. A provisional ballot is cast by a voter when they are not on the voter roll, if they come in and say, well, we are registered but somehow we are not on the roll. We allow them to cast a provisional ballot which goes in a separate envelope. That requires special processing, and because of the delay between registration at a Department of Motor Vehicles office and it being received in a local registrar's office, there would be a considerable increase in the number of people registering, in effect, at the last minute.

So our cost, then, would be about $1.30 per registered voter for this bill based on the provisions in it, $20 million based on 15 million registered voters. I don't know how you would want to expand that on a national level. California generally is about 10 percent of the Nation. We would expect that the funding for the bill, adequate funding, would have to be in the range of $150 million to $200 million annually just to cover the ongoing operating expenses.

We are concerned, my county particularly—it is 13 years since Proposition 13 was passed in California. The revenues in my county now are less than 50 percent of what they were 10 years ago. We are not in a position to raise property taxes, as are the people in other jurisdictions in the country. Therefore, our county would be in a position of having to take funds from existing social services, public health and safety services in order to pay for this program. Without adequate funding, we would expect the deterioration of the election process and local services. Without adequate funding, Mr. Chairman, our association cannot support this legislation.

Thank you.

[The prepared statement of Mr. Bernhard follows:]

BEFORE THE COMMITTEE ON RULES AND ADMINISTRATION, U.S. SENATE, TESTIMONY OF TONY BERNHARD/YOLO COUNTY CLERK/YOLO COUNTY, CA, APRIL 17, 1991

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: The California County Clerks Association is pleased to learn of Congressional interest in expanding voter participation by expediting and removing barriers to the voter registration process. As election officials, however, we have some serious concerns about the effects of S 250 on the voter registration process in our state.

Our primary considerations revolve around (1) the cost of the provisions contained in S. 250. There is no existing funding to finance the provisions of this proposal, (2) the impact on the integrity of the election registration process without adequate financing. Existing elections staff cannot produce error-free handling of the increased workload generated by this bill without adequate funding, and (3) the degredation of county-level public health and safety services as a consequence of limited State and local funds.

COUNTY COSTS

Automatic Registration Costs: Under the present proposal, a registration affidavit will be recorded for everyone completing a driver's license application, renewal, or address update (barring an affirmative action—such as checking a "no" box—on the part of the voter) regardless of whether or not a voter is currently registered or even eligible to vote.

This "automatic registration" will unquestionably produce significant numbers of affidavits duplicating those already on file—yet still requiring processing; as much as 70% of the population over 18 is presently registered according to the new census data. "Automatic registration" will also spawn a secondary process—both expensive and uncertain—for sorting out those who are ineligible (i.e. felons/parolees, non-citizens, non-residents who may remain registered in other states, those under 18 years old, etc.).

California currently has roughly 19 million driver's license holders; licenses are renewed every four years; address updates are of undetermined frequency. This breaks out at roughly 4.75 million affidavits completed/year, 400,000/month and 19,000/working day—this doesn't include DMV-issued ID cards (approximately another 5 million), or address updates. Our Secretary of State currently reimburses counties an average of 60¢ for each registration affidavit that is processed as part of state claims policy. For most counties, this reimbursement rate is extremely conservative and well below their costs—some counties surveyed by our association calculate costs as high as $1.50 average per affidavit for inspection, data input, and processing costs including followup should an affidavit be incomplete and require direct contact with the voter.

The Clerks' Association therefore estimates that, for counties, ongoing processing costs flowing directly from DMV's driver's license-generated affidavits will be approximately $3.8 million statewide. This includes only costs for regular driver's license applications and renewals, and does not include any figures for DMV address updates which would also generate an affidavit for each address change (along with necessary follow-up, etc.)—no figures on address changes have yet come to us from DMV.

Because S 250 assumes a default of "automatic registration" for driver's license applicants, a sizeable cost will be consumed merely in handling affidavits of duplicate and ineligible registrants.

The California Clerks' Association estimates an increase in voter registration of 10-15 percent flowing from Motor Voter. Thus, given our approximately 13.4 million voters currently registered, we should experience an increase of 1.5 million added to rolls as the result of Motor Voter.

Ongoing costs associated with servicing the increased stock of registered voters include expenses for: ballot printing, sample, ballot printing/labeling/mailing, absentee voter costs, data input and other labor costs. Cost estimates for servicing each registered voter vary only slightly among counties based on a statewide survey conducted during the last Congressional session: costs average $3 per registration or $4.02 million per year. These costs reflect expenses for California's sample ballots/ballot pamphlets, etc. that are provided at each election to all registered voters.

Precinct Costs: California law prohibits precinct sizes from exceeding 1,000 registered voters. The additional registered voters will require roughly 2,000 additional precincts each requiring 4 additional voting machines (@ $180), 4 additional voting booths (@ $75), an additional ballot box (@ $130), plus flags, signs, tables, additional roasters, provisional voter envelopes, etc., we estimate one-time hardware costs of approximately $1,500 per percent, or roughly $3 million statewide to equip the additional precincts. [Individual county estimates have ranged as high as $2,800 for furnishing each precinct.] Although

these are one-time costs, there will be costs for maintaining these additional precinct supplies.

Each additional precinct will require 4 precinct workers on election day—at an average cost of $50 per worker. Thus, each precinct will cost $200 in poll worker salaries for each election, averaging only two regularly-scheduled elections per fiscal year at a cost of $800,000.

Thus, additional precinct costs for the expanded list of "automatically registered" voters is estimated at $3.8 million annually.

Purge Cost Increases: Costs for conducting the purge in California under the provisions currently contained in S 250 will also increase. Currently we do everything envisioned in the new proposal except sending the final, forwardable postcard—costs for which would be approximately $.7 million based on an estimated 65¢ for handling, labelling, and postage for each voter determined to "have changed residence." [With a Motor-Voter-enhanced statewide registration of approximately 15 million, and a current average purge rate of 7 percent (for whom the new, forwardable purge notice will have to be sent) non-forwardable purge cards would be sent to approximately 1.1 million voters.]

Start-up Costs: Many counties have identified one-time costs that they will incur for such things as new/additional computer capabilities, office equipment for new staff, etc. Those figures are estimated to range, statewide, from between $8–10 million and are obviously uncertain. But they reflect the costs of maintaining an increased registration list as well as for processing the duplicate/ineligible applicants and accommodating the more complex purge costs. Additional equipment is also subject to ongoing servicing/replacement expenses.

STATE COSTS

Department of Motor Vehicles Costs: DMV estimates of the costs for handling the new procedures by DMV at $4.5–5 million/year. The methodology for arriving at this figure is not available to the Clerks' Association, but we assume that it is premised on the FEC allowing the DMV to accommodate voter registration forms we are now using.

These expenses do *not* include sizeable start-up costs involving retooling of the DMV driver's license creation system currently that is employed by all of the field offices of that agency for photographing applicants and printing the actual licenses; accommodating the new voter-registration/driver's-license forms statewide will unquestionably be very expensive.

Secretary of State Costs: Our Secretary of State will be receiving from the various offices of the DMV approximately 19,000 affidavits per day. This will require additional office staff (at least 6–7 clerical personnel), office space, supplies and equipment, etc. for sorting, packaging and postage for mailing the affidavits on a regular basis to the 58 county clerks/registrars throughout California. Rough calculations on the number of staff, overhead etc. place the cost to the SOS at $1.5–2 million per year.

The California County Clerks estimate the annual total cost for accommodating the provisions of S 250 at approximately $20 million for California. This is a conservative figure: Los Angeles County independently estimates $5–5.5 million for itself alone.

Also, these estimates do *not* include such S 250 mandated expenses for counties as: technical assistance to local agency personnel—including DMV district offices—in voter registration procedures; costs for handling affidavits generated through *address* updates to DMV records; changes to signature-digitizing equipment that may have to be made depending on format changes to voter affidavits (such equipment is currently being used by a number of larger counties); costs for handling an expected increase in provisional ballots that will result from DMV registrations processed near or at the 30 day deadline.

CONSEQUENCES OF NO AVAILABLE FUNDING

If the new voter registration processes are to be implemented without exceeding the capabilities of existing election office staffs, adequate funding is essential. County government in California is staggering under more than a decade of budget program cuts. Several counties—including Yolo County—are bordering on bankruptcy. California itself is currently facing a budget shortfall estimated as high as 20% of its total current operating budget. A program of the magnitude envisioned by this legislation cannot simply be "absorbed" by state and county election officials without (1) leaving understaffed offices prone to error, and (2) taking funding from county provided social services and including basic health and safety programs. The Federal Government cannot assume this program can be funded by states and counties just because it assigns to them the responsibilities for it.

The California County Clerks' Association is pleased that Congress is working towards expanding voter participation by expediting the voter registration process. We recognize how difficult it is to anticipate the costs of implementing such an ambitious program as envisioned, but cannot support a program that does not contain adequate funds for its implementation.

Mr. SIMPSON. Finally, Mr. President, with regard to this issue, since I want to, I guess, stir the pot a little more—it was not my idea to stir the pot, but I have heard the Senator from Kentucky. I have heard that old argument. But the American people have figured out the real issue. That is: "Who is running America." The answer is the Congress of the United States of America. That is who runs America. The President does not get a single vote. He does have the right to veto. Indeed he does.

President Ford was a great vetoer. Many of them were upheld, and many were not. That is a tool of the Executive. But it is the Congress of the United States that has the real power, and I have watched it work. The Senator from Minnesota will see it too, because it is really something to watch.

For instance, the President presents a budget and it goes to the U.S. House of Representatives where they have not had enough Republicans over there to have enough staff to fully compete with the majority or to be in the majority themselves since time immemorial. There is a certain arrogance of staff in the U.S. House of Representatives. Even the Senator from Minnesota will find that out. It is not the Members. They are fine people. I have the greatest respect for Speaker FOLEY, and BOB MICHEL. They are splendid people.

So the first thing that happens when the President sends up his budget is, they ram it right down there through the rotunda. Then they add about 20 percent to it, just chuckle, slip it out on the floor, and say let the President grapple with that one. We will teach him "a lick."

Then it comes over here, and thoughtful Members of both parties try to get some sane balance on it.

They do an appropriations bill over there in 20 minutes. I challenge my colleagues here tonight to please dig up for me any appropriations bill they can find, with the possible exception of defense, that is less than what the President of the United States presented in his budget. We will then give it a red line and enshrine it here.

The name of the game over there for nearly 50 years has been, when a Republican was in the White House to take the President's budget, whoop her up, put it out on the House floor and send it over here so we can see how many people will bleed. How many rollcall votes can be gotten so they make good 30-second spots? "This is the Republican slob that cuts your Social Security benefit; that took your veterans benefit; that took your railroad retirement."

That is the way the game is played. We understand that. Those of us on this floor tonight understand it. "We three," as the old song goes.

But the country has been run by the Democratic Congress, except one brief hiatus of 6 years when the Republicans had a majority in the U.S. Senate. You want to talk about accountability to the American people—there it is. It is very vivid, very real. And remember that the President of the United States never got a single vote on any single spending activity, on any effort to cut an entitlement program, which is impossible here, very impossible, unless it is the Republicans doing it.

I sat right here, and I know my friend from Kentucky will never forget the night when we voted 50 to 49. We wheeled my old and dear friend Senator Pete Wilson of California in here on a gurney with his tubes inserted. He was recovering from surgery. He voted, and the vote was 50 to 49. We had one Democrat support us. We got rid of 13 agencies of the Federal Government that night. We also did an across-the-board cut on the entire rest of the Federal budget.

I remember the night, and I remember my colleagues coming up on the other side of the floor and they said: "Wow, terribly gutsy of you to do that." They could not vote with us. I understand that. That is not even an excuse. That is the reality of this place. But there was genuine admiration because we had taken that step and it seemed to be what the American people wanted.

Ten days later the President of the United States took so much heat from

that vote that he really could not stick with it. That showcase bill became the subject of 30-second spots in the next election, and many of us were turned out to pasture.

Yet that seemed to be what the American people talk about all the time. "When are you people going to do an across-the-board cut?" We have had good bipartisan activity trying to do that. We had BIDEN, KASSEBAUM, GRASSLEY, the KGB, and we had other efforts. We have tried. Nothing works because someone will always come to this floor and say, "if you do not do this, the AARP will nail you; the AFL-CIO will nail you; the farmers union will nail you, or the REA is coming to town."

Mr. WELLSTONE. Will the Senator yield?

Mr. SIMPSON. That is a rather interesting part of our lives. So we do not ever cut anything back. That is the Congress.

Then, I share with you, not in confidence, of course, but there are many on our side of the aisle who feel that this bill is simply the third leg of three bills which are destined to assure a Democrat majority in this Senate. This may be a bit of paranoia, but I will share it with you. This is the third leg of the troika.

The first one is the Hatch Act, which we beat back. The second is the Democratic campaign reform bill, which we think is an incumbent protection law. And the third leg is "motor voter".

Whether that is real or not, that is a perception. This town lives by perceptions.

So that is where we are coming from. The American people can judge that any way they wish. But this really is "a bill," and the American people will have to pay it. The secretaries of state, and their state election administrators do not know how to pay it.

Mr. WELLSTONE. I know the distinguished Senator from Kentucky wants to bring the discussion to a halt, although I believe that, and the distinguished Senator from Wyoming wants to bring it to a halt as well.

Mr. SIMPSON. I believe the Senator from Kentucky wants the Senator from Minnesota and I to close; not close the Senate.

Mr. WELLSTONE. I will try. Let me, first of all, just say to my colleague from Wyoming that having been a teacher for all of these years, I want the Senator to listen to this, my distinguished colleague from Wyoming. I tell the Senator: when he was speaking about what happens to the budget bills and how difficult it is to get votes, I was waiting for him to come back to motor voter. I am trying to figure out whether the Senator was blaming this on motor voter registration. I take it the Senator was not. But I have to tell him, as someone who taught all of those years I admire his ability to lay out legislators, and some of what he has said I think I probably agree with.

But back to the subject at hand, there is something the Senator said at the end that I would just like for him to, I guess, in his own mind kind of explore the implications of it, and perhaps we can get back to the discussion tomorrow.

When the Senator says one of the things that concerns him the most is really this is a bill that will just bring about more voters who are Democrats, vote Democratic, that really concerns me because what he is saying is a piece of legislation that would make it easier for someone who lives so far away, and has a hard time registering because of such limited hours because, that person works and cannot get there at those hours, that the Senator will not want to have a piece of legislation passed because that person might vote for a Democrat. What the Senator is saying is for people who are disabled and have difficulties registering to vote, and given the current system the Senator will not want to make the changes.

I do not think the Senator wants to say this. That is why I am saying that. I know the commitment the Senator has to some of these people. I am not being coy.

I have gotten to know the Senator, and I have appreciated many of the discussions we have had. But the implications of what the Senator is saying is that the Senator does not want a piece of legislation that would make it easier for people with disabilities to register to vote, because they might vote Democratic.

Let us look at the people who are not registered and do not vote. What the Senator is saying is that the Senator would not want a piece of legislation passed that might encourage more of the young people—there are young people here tonight—to turn out to register to vote, because they might vote Democratic. What the Senator is saying is that he would not want a piece of legislation to pass which would make it easier for people of low income, moderate income, blue collar workers, to register to vote, because they might vote Democratic.

But in all due respect to my colleague, that is not the way we are supposed to make legislation. We are not supposed to pass legislation on that basis. We are supposed to put aside whether we are Democrats or Republicans and decide what kind of legislation is good public policy, what kind of legislation is good for this country, and in this particular case, what kind of legislation would lead to higher levels of registration, higher levels of participation, and more people voting.

For gosh sakes, everybody can be for people turning out and participating and voting. We ought not to be deciding on a piece of legislation on the basis of whether or not this particular person, that particular man, or that particular woman, will vote Democratic or Republican. That is not what this legislation is about.

Mr. SIMPSON. Mr. President, I certainly would not want to leave without saying that I appreciate my friend from Minnesota expressing his need for a clarification. I do not believe I have really said that all the people that would be registered under this bill would be Democrats or even alluded to that. I do not believe the record discloses that at all. It does not.

Mr. WELLSTONE. I think the Senator said it might be his paranoia, but many of them would vote Democratic. It is the same argument.

Mr. SIMPSON. Mr. President, I am speaking of that in connection with what I referred to as a "Democratic troika." In that context, I spoke of the three pieces of legislation. I was curious at the Senator's remark, if this bill is so easy, if it is so perfect, and if it is so superior a piece of legislation—why in the world would any, I guess, sensible person spurn it, especially a Republican? If it is that good, how come it has been floating around out there for 20 years? That is exactly where it has been.

First it was postcard registration. Then it floated around and became motor-voter. And then it had all sorts of forms. The States have responded, and the States have set up temporary registration booths during certain periods of the year. We have done that in Wyoming—temporary registration areas.

We are just simply trying to insure that the precious right to vote is not defrauded and befouled. When somebody can actually drive into four States in one day and register, we must get more serious. That is what we are talking about. I think that is the most destructive and disgusting form of democracy I can imagine. It would make the Founding Fathers flip in their graves.

But remember who they allowed to vote when they started—not very many. Strict rules, which were later found to be racist in some cases, very strict rules and regulations, as to who voted in this precious, emerging democracy, which have been modified to the extent that we now have ballots in 6 or 8 or 10 languages. That discussion is not my purpose. I know about immigration and refugee matters. All I am saying, is that the right to vote is a precious one, and we should do our best to insure that it is not susceptible to fraud or coercion.

There are no requirements that a voter must know the Constitution. Being able to read it was once a condition. That is gone. I can understand that. It was an intrusion on people who were inarticulate and perhaps could not speak English.

I say to the Senator and to my colleague from Kentucky, if the Senator wants motor voter registration and, they do in Minnesota; and apparently, they may in Kentucky, I say more power to them. But the Democrat Secretary of State of Wyoming will not have a thing to do with it. That is why I cast my vote, among many other reasons I have described against this bill.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. I wanted to say to the Senator that I appreciate his remarks tonight. I really very much appreciated the opportunity to have this discussion with the Senator, and I hope that more of the Senator's colleagues tomorrow will be out on the floor defending their votes, as the Senator has. I think that is what it is all about. There should be accountability.

I certainly plan on continuing this discussion tomorrow, because there are many interesting questions that the Senator raises that I hope we will get a chance to explore tomorrow. I thank my colleague from the State of Wyoming.

Mr. FORD. Mr. President, I am tempted. During the 6 years that the Republicans were in control of the Senate, we went down $2.2 trillion further in debt.

MEASURES INDEFINITELY POSTPONED

Mr. FORD. Mr. President, I ask unanimous consent that Calendar Nos. 159 and 150 be indefinitely postponed.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed into executive session to consider the following nominations: Calendar Nos. 80, 251, 252, 253, 254, 255, 256, 257 and all nominations reported by the Judiciary Committee today.

I further ask unanimous consent that the nominees be confirmed, en bloc, that 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 PRESIDING OFFICER. Without objection, it is so ordered.

The nominations, considered and confirmed en bloc, are as follows:

DEPARTMENT OF STATE

David Floyd Lambertson, of Kansas, 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 Kingdom of Thailand.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Michael J. Malbin, of New York, to be a member of the National Council on the Humanities for the remainder of the term expiring January 26, 1994.

Harvey C. Mansfield, Jr., of Massachusetts, to be a member of the National Council on the Humanities for the remainder of the term expiring January 26, 1994.

Roy L. Shafer, of Ohio, to be a member of the National Museum Services Board for a term expiring December 6, 1994.

DEPARTMENT OF LABOR

Steven I. Hofman, of Maryland, to be an Assistant Secretary of Labor.

DEPARTMENT OF EDUCATION

Jeffrey C. Martin, of Tennessee, to be General Counsel, Department of Education.

Diane S. Ravitch, of New York, to be Assistant Secretary for Educational Research and Improvement, Department of Education.

PUBLIC HEALTH SERVICE

The following candidate for personnel action in the regular corps of the Public Health Service subject to qualifications therefor as provided by law and regulations:

1. For appointment:

To be assistant surgeon

David L. Sprenger

The nominations reported today by the Judiciary Committee considered and confirmed, en bloc, are as follows:

Morton A. Brody, of Maine, to be U.S. district judge for the District of Maine.

Clyde H. Hamilton, of South Carolina, to be U.S. circuit judge for the Fourth Circuit.

Fernando J. Gaitan, Jr., of Missouri, to be U.S. district judge for the Western District of Missouri.

STATEMENT ON THE NOMINATION OF JUDGE CLYDE H. HAMILTON, OF SOUTH CAROLINA

Mr. THURMOND. Mr. President, it gives me great pleasure to recommend for confirmation Judge Clyde Hamilton, President Bush's nominee to be a judge on the Fourth Circuit Court of Appeals. On this occasion, I have the rare opportunity of having known this nominee, Judge Hamilton, all of his life.

Judge Hamilton has served as a U.S. district judge for the district of South Carolina since 1982. He is a native of Edgefield, SC, a graduate of Wofford College and the George Washington University Law School, where he graduated with honors, and was a member of the editorial staff of the Law Review. During his undergraduate studies, Judge Hamilton worked for me as a summer clerk in 1955. Judge Hamilton served in the U.S. Army from 1956 until 1958, and in the Army Reserve until 1962.

After earning his juris doctorate degree in 1961, he returned to his hometown of Edgefield, SC, and entered into the private practice of law with Mr. J.R. Folk. In 1963, he joined one of South Carolina's most prestigious law firms, known today as Butler, Means, Evins & Browne, as an associate and became a partner in 1966. Judge Hamilton was affiliated with this law firm until his appointment to the U.S. district court by President Reagan on December 1, 1981.

Mr. President, Judge Hamilton is a person of integrity, keen intellect, and ability. I believe that he will be an outstanding addition to the fourth circuit. As well, the American Bar Association gave Judge Hamilton their highest endorsement of unanimously well qualified for this appointment. It was with considerable pride that I recommended him to President Bush for elevation to the fourth circuit, and I urge my colleagues to vote in favor of the nomination of Judge Clyde Hamilton for the position of U.S. circuit judge for the fourth circuit.

STATEMENT ON THE NOMINATION OF JUDGE CLYDE H. HAMILTON, OF SOUTH CAROLINA

Mr. HOLLINGS. Mr. President, I rise today to heartily endorse the elevation of the Honorable Clyde H. Hamilton to the Fourth Circuit Court of Appeals. He is an extremely talented man who has the education, the experience, and the temperament that ensure he will be a fine appellate judge.

Judge Hamilton received his undergraduate education at Wofford College in Spartanburg, SC. Wofford is not as widely known as it should be but is, quite simply, one of the finest institutions of higher learning in this country. Its graduates have excelled in every aspect of life and Judge Hamilton is further evidence of the quality of individual the school attracts. He went on to law school at the George Washington University here in Washington, where he served on the Law Review and graduated with honors.

During the 18 years he practiced law, he handled a variety of cases in both State and Federal courts. The cases he dealt with involved both civil and criminal matters. This extensive seasoning in the practice of law has served him well on the bench.

For the last 9½ years Judge Hamilton has served as a district court judge in my State of South Carolina. And he has done an outstanding job. He has demonstrated the thoughtfulness and the experience and the depth of knowledge that have won him this seat on the fourth circuit. Most importantly, however, Judge Hamilton has combined all these attributes with a top notch analytical mind and the ability to express himself clearly and convincingly.

Mr. President, I commend President Bush for making an outstanding selection, and I heartily endorse the nomination of Judge Hamilton.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a nomination which was referred to the Committee on Labor and Human Resources.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:38 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 bill, in which it requests the concurrence of the Senate:

H.R. 5. An act to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 3:48 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolution:

H.R. 427. An Act to disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes;

H.R. 998. An Act to designate the building in Vacherie, Louisiana, which houses the primary operations of the United States Postal Service as the "John Richard Haydel Post Office Building";

H.R. 2347. An Act to redesignate the Midland General Mail Facility in Midland, Texas, as the "Carl O. Hyde General Mail Facility"; and for other purposes; and

H.J. Res. 255. Joint resolution designating the week beginning July 21, 1991, as the "Korean War Veterans Remembrance Week."

The enrolled bills and joint resolution were subsequently signed by President pro tempore [Mr. BYRD].

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. 5. An Act to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers; reports, and documents, which were referred as indicated:

EC-1631. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a mid-session review of the budget; pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, referred jointly to the Committee on Appropriations and the Committee on the Budget.

EC-1632. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the fifth report on United States Costs in the Persian Gulf Conflict and Foreign Contributions to Offset Such Costs; to the Committee on Armed Services.

EC-1633. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a report relating to standardization of equipment among members of the North Atlantic Treaty Organization and cooperative research programs with NATO and major non-NATO allies; to the Committee on Armed Services.

EC-1634. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a report entitled "Not in My Backyard: Removing Barriers to Affordable Housing"; to the Committee on Banking, Housing, and Urban Affairs.

EC-1635. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, the semi-annual report on tied aid credits dated June 1991; to the Committee on Banking, Housing, and Urban Affairs.

EC-1636. A communication from the President of the Oversight Board, Resolution Trust Corporation, transmitting, pursuant to law, the financial operating plan of the Corporation for the third and fourth quarters of fiscal year 1991 and the first quarter of fiscal year 1992; to the Committee on Banking, Housing, and Urban Affairs.

EC-1637. A communication from the Chairman of the Board of Governors of the Federal Reserve System; transmitting, pursuant to law, the Monetary Policy Report of the Board; to the Committee on Banking, Housing, and Urban Affairs.

EC-1638. A communication from the President and Chief Executive Officer of the Corporation for Public Broadcasting, transmitting, pursuant to law, the annual report on the provision of services to minority and diverse audiences by public broadcasting entities and public telecommunications entities; to the Committee on Commerce, Science, and Transportation.

EC-1639. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report on Japan's intention to suspend trade in certain endangerd species; to the Committee on Commerce, Science, and Transportation.

EC-1640. A communication from the Chairman of the Advisory Council on Historic Preservation, transmitting a draft of proposed legislation to amend the Act of October 15, 1988 (80 Stat. 915), as amended, establishing a program for the preservation of additional historic property throughout the Nation, and for other purposes; to the Committee on Energy and Natural Resources.

EC-1641. A communication from the Secretary of Energy, transmitting, pursuant to law, the fourteenth report on enforcement actions and comprehensive status of Exxon and stripper well oil overcharge funds covering the second quarter of fiscal year 1991; to the Committee on Energy and Natural Resources.

EC-1642. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report on the National Pretreatment Program; to the Committee on Environment and Public Works.

EC-1643. A communication from the Administrator of General Services, transmitting, pursuant to law, a proposed prospectus for the Environmental Protection Agency; to the Committee on Environment and Public Works.

EC-1644. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the report on abnormal occurrences at licensed nuclear facilities for the first calendar quarter of 1991; to the Committee on Environment and Public Works.

EC-1645. A communication from the Administrator of General Services, transmitting, pursuant to law, notice of the determination that it is necessary in the public interest to use procedures other than competitive procedures in the procurement of leased space in the One Judiciary Square Building, 441 4th Street N.W., Washington, D.C.; to the Committee on Environment and Public Works.

EC-1646. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to amend the Harmonized Tariff Schedule of the United States provisions implementing Annex D of the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials, and for other purposes; to the Committee on Finance.

EC-1647. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Medicare Coverage Denials for Home Health Agency (HHA), Skilled Nursing Facility (SNF), and Hospice Services: Limitation of Liability and Favorable Presumption"; to the Committee on Finance.

EC-1648. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the annual report on the extent and disposition of United States contributions to international organizations for fiscal year 1990; to the Committee on Foreign Relations.

EC-1649. A communication from the Director of the Office of Personnel Management, transmitting a draft of proposed legislation to amend title 5, United States Code, to establish a program of Public Service Scholarships, and for other purposes; to the Committee on Governmental Affairs.

EC-1650. A communication from the Chairperson of the Board of Elections and Ethics, Government of the District of Columbia, transmitting, pursuant to law, notice of the filing of a petition for referendum on the Assault Weapon Manufacturing Strict Liability Act of 1990 Repealer Act of 1991; to the Committee on Governmental Affairs.

EC-1651. A communication from the Vice President (Human Resource Management) of the Farm Credit Bank of Texas, transmitting, pursuant to law, the audited financial statement of the Farm Credit Bank of Texas Pension Plan for December 31, 1990; to the Committee on Governmental Affairs.

EC-1652. A communication from the Chief, Insurance and Benefits Division, Air Force Morale, Welfare, and Recreation Center, Department of the Air Force, transmitting, pursuant to law, the annual report on the Air Force Nonappropriated Fund Retirement Plan for Civilian Employees for the plan year ended September 30, 1990; to the Committee on Governmental Affairs.

EC-1653. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9-62 adopted by the Council on July 2, 1991; to the Committee on Governmental Affairs.

EC-1654. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9-63 adopted by the Council on July 2, 1991; to the Committee on Governmental Affairs.

EC-1655. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report on the Indian Health Service Health Facilities Construction Priority System; to the Select Committee on Indian Affairs.

EC-1656. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the long-term effects of infant formulas deficient in chloride; to the Committee on Labor and Human Resources.

EC-1657. A communication from the Secretary of Education, transmitting a draft of proposed legislation to alleviate burdens imposed upon educational agencies and institutions by the Family Educational Rights and Privacy Act of 1974 with respect to the maintenance of records by campus law enforcement units; to the Committee on Labor and Human Resources.

EC-1658. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report on the types of projects and activities funded under the Drug Abuse Prevention Program for Runaway and Homeless Youth; to the Committee on Labor and Human Resources.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-184. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on Agriculture, Nutrition, and Forestry.

"ASSEMBLY JOINT RESOLUTION NO. 23

"Whereas recent information indicates that at least 5.5 million children in the United States under the age of 12 years are hungry and over 11 million are either hungry or at risk of hunger; and

"Whereas in Nevada at least 74,179 children are at risk of hunger and nearly one-fourth of the families with children are hungry or at risk of hunger; and

"Whereas in Washoe County alone, 30,336 children received services from food bank agencies in 1990; and

"Whereas legislation has been introduced in Congress which is intended to reduce hunger, especially hunger among children; and

"Whereas the House of Representatives is currently considering a bill that could significantly reduce hunger among children, referred to as the Mickey Leland Childhood Hunger Relief Act, as a living memorial to the founder and chairman of the House Select Committee on Hunger, Representative Mickey Leland, who died on a trip to investigate hunger in Ethiopian refugee camps 2 years ago; and

"Whereas the Senate is also considering a bill to provide relief from hunger which is referred to as the Childhood Hunger Prevention Act; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of Nevada, jointly*, That the Nevada Legislature urges the Congress of the United States to recognize that hunger has become a serious problem in our country and support and pass legislation to reduce hunger among children in the United States; and be it further

"*Resolved*, That the Chief Clerk of the Assembly prepare and transmit a copy of this resolution to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

"*Resolved*, That this resolution becomes effective upon passage and approval."

POM-185. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Commerce, Science, and Transportation:

SENATE CONCURRENT RESOLUTION NO. 64

"Whereas Congress last year passed a boat owner user fee supposedly to help defray the cost of United States Coast Guard boating programs, such as emergency rescues and maintenance of navigational buoys; and

"Whereas none of the revenue is earmarked for actual coast guard programs and would in fact create no new services to the taxpayers; and

"Whereas the user fee is little more than a leisure time tax on those citizens recreationally boating on our waterways; and

"Whereas boat owners already pay more than their fair share of taxes, including customs entry fees, radio license fees, state registration fees, federal luxury taxes, trailer fees, and other charges.

"*Therefore, be it resolved*, That the Legislature of Louisiana memorializes the Congress of the United States to repeal the boat user fee set forth in 46 U.S.C. §2110.

"*Be it further resolved*, That a copy of this Resolution shall be transmitted to the Secretary of the United States Senate and the Clerk of the United States House of Representatives and to each member of the Louisiana congressional delegation."

POM-186. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Environment and Public Works:

SENATE CONCURRENT RESOLUTION NO. 195

"Whereas nearly fifty years ago the Congress of the United States authorized the United States Army Corps of Engineers to bring a nine foot navigation channel to Camden, Arkansas; and

"Whereas in the early 1980's, over one hundred bend cuts and widenings were proposed to improve the Ouachita River; and

"Whereas most bend straightenings on the Ouachita River were ultimately eliminated by the corps and work on the upper portion of the river was put on hold only to resurface at the end of the decade; and

"Whereas the bend cuts and channel widenings of the Ouachita River will only serve to destroy a natural wildlife habitat and scenic portion of the state; and

"Whereas this project will not improve shipping and navigation upon the Ouachita and Black Rivers, but, will only serve to destroy a tourist and recreational area which brings more jobs and resources to the northern portion of Louisiana; and

"Whereas Congress should authorize the corps to maintain the Ouachita River north of the bridges at Monroe for the highest and best use which is not for navigation but wildlife and recreation.

"*Therefore, be it resolved*, That the Legislature of Louisiana memorializes the Congress of the United States to change the congressional mandate to the United States Army Corps of Engineers from one of further channelling on the Ouachita River to one of maintenance of the river north of the bridges at Monroe for their highest and best use for wildlife and recreation.

"*Be it further resolved*, That a copy of this Resolution shall be transmitted to the Secretary of the United States Senate and the Clerk of the United States House of Representatives and to each member of the Louisiana Congressional delegation."

POM-187. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Finance:

"Whereas the luxury excise tax on boats valued at more than one hundred thousand dollars will have a tremendous impact on the sales volume of the manufacturers building these boats; and

"Whereas the National Marine Manufacturers Association estimates that six to eight thousand boat industry workers could be idled or laid off due to declining sales as a direct result of the luxury tax; and

"Whereas the federal government has created a devastatingly harmful job-loss tax at a time when the national economy is straining with the weight of widespread recession; and

"Whereas the loss of federal taxes which will not be collected from these unemployed workers more than offsets the tax benefits gained from the tax.

"*Therefore be it resolved*, That the Legislature of Louisiana memorializes the Congress of the United States to repeal the luxury tax on boats valued at over one hundred thousand dollars.

"*Be it further resolved*, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana Congressional delegation."

POM-188. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on the Judiciary:

"ASSEMBLY JOINT RESOLUTION NO. 25

"Whereas the text of the Tahoe Regional Planning Compact is set forth in full in NRS 277,200; and

"Whereas the compact was amended by the State of California and the amendments were adopted by the Nevada Legislature in 1987; and

"Whereas the amendments become effective upon their approval by the Congress of the United States; and

"Whereas the amendments would authorize certain members of the California and Nevada delegations which constitute the governing body of the Tahoe Regional Planning Agency to appoint alternates to attend meetings and vote in the absence of the appointed members, alter the selection process of the Nevada delegation and further expand the powers of the Tahoe Transportation District; and

"Whereas the compact was enacted to achieve regional goals in conserving natural resources of the entire Lake Tahoe Basin and the amendments are consistent with this objective; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of Nevada, jointly*, That the Legislature of the State of Nevada hereby urges the Congress of the United States to expedite ratification of the amendments to the Tahoe Re-

gional Planning Compact made by the State of California and adopted by the Nevada Legislature in 1987; and be it further

"*Resolved*, That the Chief Clerk of the Assembly prepare and transmit a copy of this resolution to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and to each member of the Nevada Congressional Delegation; and be it further

"*Resolved*, That this resolution becomes effective upon passage and approval."

POM-189. A resolution adopted by the House of Representatives of the State of Illinois; to the Committee on Labor and Human Resources:

HOUSE RESOLUTION NO. 225

"Whereas the continued global competitiveness of this Nation depends upon a continuing ability of America's youth to pursue a goal of higher education; and

"Whereas without Federal student financial aid programs, a substantial percentage of those now attending college would not be there; and

"Whereas because Federal student financial aid programs are the primary response that the U.S. Congress makes to the needs of those who can't attend college without help, it is very important that the assistance that is available under those programs be awarded to those whose financial needs are essentially the same, even though in one case that need arises because a youth's parents meet financial aid criteria while in another case that same need arises because the youth, though under 24 years of age, nevertheless no longer is supported by his parents or claimed by them as an exemption on their income tax returns; therefore, be it

"*Resolved, by the House of Representatives of the Eighty-Seventh General Assembly of the State of Illinois*, That we urge the U.S. Congress to amend those provisions of Federal law that govern the award of financial assistance to persons attending or applying to attend institutions of higher learning in order that persons under 24 years of age (even though they have no legal dependents and are neither wards of court nor veterans of the U.S. Armed Forces), who cannot legally be claimed as an exemption on the Federal Income tax return of their natural or adoptive parents or legal guardian for the taxable year in which any part of the financial assistance applied for is to be awarded, and who were not eligible to be so claimed for the 2 immediately preceding taxable years, will be evaluated for assistance under Federally regulated student loan, grant and scholarship programs without consideration or required reporting of the household data, income, earnings, benefits, assets or expenses of their parents, stepparent or legal guardian; and be it further

"*Resolved*, That suitable copies of this resolution be presented to the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the Illinois congressional delegation."

POM-190. A resolution adopted by the Assembly of the State of New York; to the Committee on Veterans' Affairs:

LEGISLATIVE RESOLUTION

"Whereas it is reported that a committee within the Veterans' Administration has been studying and may recommend to Congress, as a means of reducing the federal budget, a number of proposals which include the elimination of significant established benefits, services and entitlement programs for disabled veterans; and

"Whereas these proposals would send a strong signal to Congress endorsing the elimination of long-established entitlement programs for veterans, particularly those veterans with injuries or disabilities sustained while serving in the armed forces of the United States; and

"Whereas it was the intent of the Congress of the United States from the beginning of our Republic to make just and reasonable restitution for the service and sacrifice of those men and women who have served in defense of this nation; and

"Whereas successive Congresses and Administrations have recognized this obligation and reaffirmed our national commitment to those who have served in 9 succeeding major armed conflicts, expanding this obligation, in Abraham Lincoln's words, 'To care for him who shall have borne the battle, and for his widow, and his orphan'; and

"Whereas any reduction of established benefits and services would be a betrayal of those veterans who have so gallantly served in the past; and

"Whereas this commitment not only serves the veterans, the widow and the orphan, but, by example and support, promotes the national defense by giving reassurance to those who serve now or those who may desire or have to serve in defense of this nation; and

"Whereas during this time of grave uncertainty in the Persian Gulf, our unwavering commitment to care for our nation's service personnel should be reaffirmed; now, therefore, be it

"*Resolved*, That this Legislative Body pause in its deliberations and, while recognizing the seriousness of the current federal budget deficit, memorialize Congress to reject any proposal which would erode or eliminate any veterans' benefit or service provided by the federal government as a means of reducing federal expenditures; and be it further

"*Resolved*, That copies of this Resolution, suitably engrossed, be transmitted to the presiding officers of each house of Congress and to each member of Congress from New York."

POM-191. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on Energy and Natural Resources:

ASSEMBLY JOINT RESOLUTION NO. 28

"Whereas the Wild Free-Roaming Horses and Burros Act of 1971 (16 U.S.C. §§1331 et seq.) protects wild horses and burros from destruction, capture or sale by any person or governmental entity except when authorized by the Secretary of the Interior or the Secretary of Agriculture in connection with public lands administered by the Bureau of Land Management and the Forest Service; and

"Whereas over 65 percent of the wild horses and burros in the United States are in Nevada and the population of the wild horses and burros is increasing at a rate of approximately 18 percent a year; and

"Whereas the Bureau of Land Management in Nevada receives less than 16 percent of the budget of the Department of the Interior for the management of public lands and for the protection of the habitat of the herds of wild horses and burros; and

"Whereas because of the inadequate funding, federal agencies have not been able to gather the data that is required to establish a thriving natural ecological balance on the public lands; and

"Whereas one of the provisions of the Wild Free-Roaming Horses and Burros Act of 1971 (16 U.S.C. §1333(b)(1)) requires the Secretary of the Department of Agriculture and the Secretary of the Department of the Interior to consult with the wildlife agencies of the states; and

"Whereas pursuant to NRS 504.470, the primary duty of the state commission for the preservation of wild horses is to preserve the herds of wild horses in Nevada; and

"Whereas the federal agencies that consult with the department of wildlife have acknowledged that the commission for the preservation of wild horses is a state agency pursuant to the provisions of the Wild Free-Roaming Horses and Burros Act of 1971 (16 U.S.C. §§1331 et seq.); now, therefore, be it

"*Resolved by the Assembly and the Senate of the State of Nevada, jointly*, That Congress is hereby urged to review the funding for the management of public lands and the protection of the habitat of wild horses and burros and to provide a pro rata distribution of money that is based on the population of the herds of wild horses and burros in each state; and be it further

"*Resolved*, That the Secretary of the Department of Agriculture and the Secretary of the Department of the Interior recognize that the commission for the preservation of wild horses is a state agency for the purposes of the Wild Free-Roaming Horses and Burros Act of 1971; and be it further

"*Resolved*, That a copy of this resolution be transmitted by the Chief Clerk of the Assembly to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives, the Secretary of the Department of the Interior, the Secretary of the Department of Agriculture and each member of the Nevada Congressional Delegation; and be it further

"*Resolved*, That this resolution becomes effective upon passage and approval."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 55. A bill to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes (Rept. No. 102-111).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary:

Clyde H. Hamilton, of South Carolina, to be United States Circuit Judge for the Fourth Circuit;

Fernando J. Gaitan, Jr., of Missouri, to be United States District Judge for the Western District of Missouri; and

Morton A. Brody, of Maine, to be United States District Judge for the District of Maine.

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. GRAHAM (for himself, Mr. ADAMS, Mr. BRYAN, Ms. MIKULSKI, Mr. REID, and Mr. SYMMS):

S. 1492. A bill to amend the Internal Revenue Code of 1986; to the Committee on Finance.

By Mr. GRAHAM (for himself and Mr. ADAMS):

S. 1493. A bill to establish the High Speed Surface Transportation Development Corporation; to provide for high speed surface transportation infrastructure development; and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HEFLIN:

S. 1494. A bill to implement the recommendations of the Federal Courts Study Committee, and for other purposes; to the Committee on the Judiciary.

By Mr. JOHNSTON:

S. 1495. A bill to provide for the establishment of the St. Croix, Virgin Islands Historical Park and Ecological Preserve, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 1496. A bill to suspend temporarily the duty on ofloxacin; to the Committee on Finance.

By Mr. METZENBAUM (for himself, Mr. DURENBERGER, Mr. LEVIN, Mr. GLENN, and Mr. WELLSTONE):

S. 1497. A bill entitled the "Great Lakes Protection Act of 1991"; to the Committee on Environment and Public Works.

By Mr. BREAUX:

S. 1498. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of businesses within Federal military installations which are closed or realigned and for the hiring of individuals laid off by reason of such closings or realignments, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY (for himself and Mr. DODD):

S. 1499. A bill to reauthorize and revise certain provisions of the Higher Education Act of 1965, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KENNEDY:

S. 1500. A bill to amend title IX of the Higher Education Act of 1965 to enhance the quality and diversity of college and university faculty and to expand individual opportunity in graduate education, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. BURNS (for himself, Mr. CONRAD, Mr. SHELBY, Mr. SIMPSON, Mr. MURKOWSKI, Mr. AKAKA, Mr. BAUCUS, Mr. DOMENICI, Mr. WALLOP, Mr. BROWN, Mr. CRAIG, and Mr. SYMMS):

S. 1501. A bill to amend the Reclamation Reform Act of 1982, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FORD (for himself, Mr. MCCONNELL, Mr. SASSER, and Mr. GORE):

S. Res. 155. A resolution designating the week of August 18, 1991, through August 24, 1991, as "National American Saddlebred Horse Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAHAM (for himself, Mr. ADAMS, Mr. BRYAN, Ms. MIKULSKI, Mr. REID, and Mr. SYMMS):

S. 1492. A bill to amend the International Revenue Code of 1986; to the Committee on Finance.

By Mr. GRAHAM (for himself and Mr. ADAMS):

S. 1493. A bill to establish the High-Speed Surface Transportation Development Corporation; to provide for high-speed surface transportation infrastructure development; and for other purposes; to the Committee on Commerce, Science, and Transportation.

HIGH-SPEED SURFACE TRANSPORTATION DEVELOPMENT

Mr. GRAHAM. Mr. President, today I introduce two bills to accelerate the progress toward high-speed rail travel as an integral part of our Nation's transportation system.

Mr. President, the first bill, in which I am joined by the Presiding Officer as well as Senators ADAMS, BRYAN, MIKULSKI, and SYMMS, will amend section 146(g) of the Internal Revenue Code. It will provide the same tax-exempt bond financing treatment for high-speed intercity rail facilities, including magnetic levitation trains, as is currently enjoyed by airports and seaports.

The second bill, in which I am joined by Senator ADAMS, the High-Speed Surface Transportation Development Corporation Act of 1991, establishes a corporation to assist States through loan guarantees and other incentives with development and construction of new high-speed surface transportation systems.

Financing is perhaps the single greatest obstacle to implementation of high-speed surface transportation technologies in the United States. Equalizing tax incentives to the private sector will permit transportation infrastructure investment decisions to be made more fairly and on the basis of merit.

Establishing a corporation that is structured to further assist the States in this area will underscore the partnership and commitment in the development of this needed alternative transportation mode.

The bills I am introducing today accomplish these objectives.

It is encouraging that the rapidly growing interest in high-speed rail stems largely from initiatives at the State level. Recently, the State of Texas awarded a franchise to one of two bidding consortiums for a high-speed line that will connect the cities of Houston, Dallas, Fort Worth, Austin, and San Antonio.

In 1990, California and Nevada awarded a similar franchise for a magnetic levitation system capable of speeds of 250 miles per hour running between Anaheim and Las Vegas.

Illinois, Pennsylvania, Ohio, Washington, New York, and a growing list of States are actively exploring prospects for high-speed surface transportation systems.

My own State, Florida, was one of the first to establish a high-speed rail transportation commission and solicit proposals from the private sector for a cross-State high-speed rail system connecting Miami, Tampa, and Orlando, and for a magnetic levitation demonstration system in central Florida. In early June, Gov. Lawton Chiles and the Florida Cabinet issued their final certification, thus giving the go-ahead to this magnetic levitation project, which will be the first magnetic levitation system in the world.

There is a reason for this interest. Americans are tired of gridlock on our highways, and weary of winglock at our congested airports. The statistics tell the story: Vehicle delays due to freeway congestion will increase 400 percent in urban areas from 1985 to 2005, according to one Federal Highway Administration estimate.

The Association of State Highway and Transportation Officials [AASHTO] tells us that the surface travel demand is expected to at least double by the year 2020.

The Federal Aviation Administration says that our 21 primary airports each now experience more than 20,000 hours of annual flight delays at an annual cost to airlines and U.S. businesses of at least $5 billion; by 1997, 33 airports are forecast to exceed this level of delay; and the litany goes on as travelers in this country become increasingly frustrated with congestion.

We need solutions. High-speed trains, both advanced steel-wheel technologies as well as magnetic levitation, must be part of our Nation's transportation future. For intercity travel at distances between 100 and 600 miles, high-speed ground transportation is an attractive alternative.

First, high-speed trains are safe. The Japanese, French, and German high-speed systems, for example, have never had a passenger fatality after years of operations carrying billions of passengers.

Second, high-speed trains are environmentally sensitive. A shift in travel to electrically powered trains will assist in achieving a cleaner atmosphere, since electric utilities, which power these systems, emit far less amounts of primary components of air pollution than highway vehicles. High-speed rail also conserves land compared with highway travel—2 tracks of a high-speed system can potentially carry as many travelers as 10 lanes of an interstate highway.

Third, high-speed trains are energy efficient. For example, new high-speed rail systems between major metropolitan centers—Miami-Orlando-Tampa; Chicago-Milwaukee; Philadelphia-

Pittsburgh; and Houston-Dallas-Fort Worth-Austin-San Antonio—would permit our airlines to perform their mission most effectively by carrying large numbers of people long distances. Short airline trips of under 500 miles are costly and fuel inefficient, and clog the limited takeoff and landing slots available at our airports.

Despite the interest and need for high-speed ground transportation, we have yet to turn a single shovel of earth for any true high-speed system in this country.

Mr. President, that is in spite of the fact that all over the world high-speed rail systems are being enjoyed every day by hundreds of thousands of travelers.

Why is this the history of the United States? Federal policy now emphasizes the existing highway and aviation modes to the near exclusion of new ideas in transportation. Both the highway and airlines benefit from the dedicated trust funds and public sector support. In contrast, we have told potential builders of high-speed ground systems to pay their own way.

After a decade of intensive exploration of the potential financial performance of high-speed trains, we are back to what we knew at the beginning: High-speed rail corridors will pay for their operating costs and some portion of their capital costs. Farebox and other revenues, however, will not be sufficient to cover all of the costs of capital necessary to construct these systems, even though every high-speed system which has gone into operation anywhere in the world has turned a profit operationally. The public sector must close this gap to bring the reality of high-speed surface transportation.

The States have tried. In Florida, we designed a sophisticated real estate value-capture mechanism intended to cover this significant portion of this gap for the private sector applicant.

Other States have pioneered other creative incentives.

It is now time for the Federal Government to join in this State-led effort.

Steps have already been taken by the Senate. On June 19, the Senate passed the Surface Transportation Efficiency Act of 1991. Included in this bill is a $750 million program to encourage the research and implementation of magnetic levitation. In addition to this program is authority for use and modification of interstate right-of-way for high-speed ground transportation systems.

Prior to that, in 1988, with the passage of the Technical and Miscellaneous Revenue Act, Congress took a preliminary step to join in the State-led effort to make high-speed ground transportation a reality.

The act included a provision which then-Senator Chiles, Senator BENTSEN, and I promoted. The provision amended the Internal Revenue Code to provide that the fixed guideway costs of a qualifying high-speed intercity rail project are eligible for tax-exempt financing provided that 25 percent of each bond issue for such costs receives an allocation from State private activity bond volume limitations.

This act was a major step forward, but we must do more.

Under current tax law, the remaining 25 percent of guideway and infrastructure costs are also eligible for tax-exempt financing, but must be included under the State volume caps. Given the specific total limits on State tax-exempt borrowing and the many competing uses for these funds, the limit has the practical effect of excluding much of the total project costs from tax-exempt financing.

We have a double standard—airports and seaports are eligible fully for tax-exempt financing, but high-speed intercity rail facilities are not.

We must end this disparity, take the 1988 Tax Act to its logical conclusion, and provide for Federal tax-exempt financing for 100 percent of total high-speed rail project costs. The bill I am introducing today amends the Internal Revenue Code and accomplishes this goal.

Exempting from Federal taxes interest on high-speed rail project debt would lower the cost of that debt by roughly 30 percent. This would reduce the effective interest rate on the project's debt from 13 to 9 percent, meaning that the average cost of capital, including debt and equity, would be as much as one quarter lower. The stream of revenues required to support the entire project financing, including debt and equity, would be lower by that same amount, or 25 percent. That margin could make the difference between moving ahead with high-speed rail systems in this country, and continuing our present crisis of congestion.

The High-Speed Surface Transportation Development Corporation Act of 1991 is intended to provide additional incentives by guaranteeing loans sought in connection with the development of high-speed surface transportation systems. Under this bill, the proceeds from such loans could be used to assist States in making any modifications to existing facilities necessary to accommodate these systems. Activities such as eliminating grade crossings and acquiring rights-of-way also would be eligible for guaranteed loan proceeds.

As with tax-exempt financing, rolling stock would not be eligible for guaranteed loans. Moreover, guaranteed loans could only be used to support 75 percent of the State's total project cost. Thus, private or State funds will still be an integral component of funding for high-speed surface transportation systems.

In addition to administering the guaranteed loan program, the corporation will be responsible for coordinating State's activities, and providing technical advice and consulting services in connection with the development of projects around the country.

The legislation I am introducing today will enable us to move ahead with high-speed surface transportation systems in the United States. By reducing the revenue required by permitting the use of tax-exempt debt outside of the State volume cap and by providing the necessary Federal guarantees for loans obtained in connection with State projects, will not only enable the Texas consortium to start construction but will make other State's and interstate systems sufficiently attractive to the financial markets.

One of the themes of America is the central role of transportation in our national development. In the 19th century the Federal Government assisted in the creation of canals, river transport, and railroads. These developments were critical to our industrial revolution.

In this century, the Interstate System has redrawn the map of urban and rural America.

The question today is what will be our contribution to the mobility of America in the 21st century. A modern system of high-speed ground transportation should be an important part of the answer to that question.

Completion of congressional initiatives already undertaken and the adoption of the measures I am introducing today are critical to ensuring that the Federal Government's role in the partnership with State and local governments and private citizens will be a strong one. It will be a strong partnership that can bring this dream to reality.

By Mr. HEFLIN:

S. 1494. A bill to implement the recommendations of the Federal Courts Study Committee, and for other purposes; to the Committee on the Judiciary.

FEDERAL COURTS STUDY COMMITTEE IMPLEMENTATION ACT

Mr. HEFLIN. Mr. President, I rise today to introduce the Federal Courts Study Committee Implementation Act of 1991.

In November 1988, the 100th Congress created within the Judicial Conference of the United States a 15-member Federal courts study committee and directed it, by April 2, 1990, to "make a complete study of the courts of the United States and of the several States and transmit a report * * * on such study." The statute specifically directed the committee to analyze alternative dispute resolution, Federal Court structure and administration, intra- and inter-circuit conflicts in the courts of appeals, and the types of disputes currently embraced by Federal jurisdiction. More broadly, it directed

the committee to "recommend revisions to be made to laws of the United States as the committee, on the basis of such study, deems advisable," to "develop a long-range plan for the judicial system," and to "make such other recommendations and conclusions it deems advisable."

In December 1988, Chief Justice William Rehnquist appointed the committee members, who were, in the words of the statute, "representative of the various interests, needs, and concerns which may be affected by the jurisdiction of the Federal courts." The committee includes members of the Federal executive, legislative, and judicial branches and representatives from State governments, universities, and private practice, and I was privileged to serve as a member of this committee.

Last Congress, the Federal Courts Study Committee Implementation Act of 1990 was enacted into law as part of the Judicial Improvements Act of 1990. That Federal courts study committee legislation authorized a study of intercircuit conflicts in the courts of appeals, extended the terms of office of bankruptcy judges, revised the retirement system for claims court judges, addressed issues concerning appeals of bankruptcy cases, provided supplemental jurisdiction for the Federal district courts, extended the life of the Parole Commission, and authorized a study of the Federal Defender Program, among other things.

The legislation which I am introducing today will incorporate many of the remaining recommendations of the Federal courts study committee. A brief summary of the provisions set forth in title I of the legislation is as follows:

Section 101—Authorizes a 5-year pilot project to resolve intercircuit conflicts.

Section 102—Requires Congress to use a checklist in reviewing proposed legislation for technical problems.

Section 103—Includes the Court of International Trade and the Court of Appeals for the Federal Circuit in the Federal judiciary budget process.

Section 104—Requires each Federal circuit to establish bankruptcy appellate panels.

Section 105—Delegates authority to the Supreme Court to prescribe rules for appeal of final and interlocutory decisions.

Section 106—Places limitations on Federal diversity jurisdiction.

Section 107—Limits the removal of certain ERISA actions to Federal court.

Section 108—Abolishes the temporary emergency court of appeals and vests its remaining caseload in the Court of Appeals for the Federal circuit.

Section 109—Transfers jurisdiction for supervised release revocation hearings from district courts to the United States Parole Commission.

Section 110—Requires the exhaustion of State remedies under 42 U.S.C. 1997 prior to the filing of State prisoner suits brought under 42 U.S.C. 1983.

Section 111—Puts jurisdictional limitations on suits brought under the Federal Torts Claims Act.

In addition, title II of this legislation establishes a commission to be known as the National Commission on Federal Criminal Law Reform. This Commission will perform a comprehensive study of the Federal criminal laws and draft a proposed recodification of such laws.

Mr. President, what does this proposed legislation mean to the average American? The committee learned that between 1958 and 1988 the number of cases filed in the U.S. district courts tripled and the number of cases filed in the courts of appeals increased tenfold. I might remind my colleagues that ninety percent of the Nation's judicial business is conducted in State courts—yet it is obvious that in regard to the remaining 10 percent of business in the Federal courts, there has been a litigation explosion.

The ability of our Federal court system to dispose of its caseload expeditiously and efficiently goes to the heart of dispensing justice, and we in the Congress have a duty to examine the recommendations of the Federal courts study committee. Increasing the number of Federal judges is not the only solution. The committee has not recommended "radical reform," but rather "corrective surgery" with regard to the structure and management aspects of the administration of justice.

Mr. President, I request unanimous consent that the text of the bill be included in the RECORD.

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

S. 1494

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 "Federal Courts Study Committee Implementation Act of 1991".

TITLE I—IMPLEMENTATION OF FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

SEC. 101. INTERCIRCUIT CONFLICT RESOLUTION DEMONSTRATION PROGRAM.

(a) ORDER OF REFERENCE.—When by petition for a writ or certiorari or notice of appeal to the Supreme Court of the United States it is alleged, or it other appears, that an issue presented in the case involves a matter as to which the lower courts are in disagreement, the Supreme Court may issue an order of reference with regard to that issue. The order of reference shall include a listing of the United States courts of appeals which have decided the issue as to which a conflict exists.

(b) SELECTION OF COURT OF APPEALS.—When an order of reference has been issued in a case, the Clerk of the Supreme Court shall select at random a court of appeals, from all courts of appeals not on the applicable listing described under subsection (a), to hear such case for a decision en banc. Such court shall have jurisdiction over all issues referred and may issue such orders as may be necessary concerning its jurisdiction.

(c) EN BANC DECISION.—The en banc decision shall be final, subject only to the right of a party adversely affected by the decision to file a motion for review by the Supreme Court within thirty days after the date of the en banc opinion of the court of appeals. No response shall be made to such a motion, unless the Supreme Court orders it. The Supreme Court may review the case in the same manner as any case under section 1254(1) of title 28, United States Code.

(d) PRECEDENTIAL EFFECT OF DECISION.—If review under subsection (c) is not sought or if review is sought and denied, the opinion of the en banc court shall have the precedential effect in each circuit of an en banc decision of the court of appeals of each such respective circuit.

(e) TEMPORARY RULES.—The Supreme Court may issue temporary rules supplemental to its own rules and to the Federal Rules of Appellate Procedure governing the procedure in the Supreme Court and the courts of appeals in cases referred under this section.

(f) REPORT TO CONGRESS AND THE JUDICIAL CONFERENCE.—The Judicial Conference of the United States shall establish a committee to monitor and evaluate the operation and effects of this section. No later than January 1, 1996, the committee shall submit a report to the Congress and the Judicial Conference on the operations and effects of this section. Such report shall include—

(1) the number and kinds of cases referred under this section;

(2) the cases which were eligible for referral under this section, but were not referred;

(3) the total caseload of the Supreme Court;

(4) such other information as the committee determines relevant to the continuation and effects of intercircuit conflicts nationally; and

(5) any recommendations as to whether the provisions of this section should be continued, modified, terminated, or replaced by an alternative procedure.

(g) EFFECTIVE DATE.—(1) The provisions of this section shall take effect on January 1, 1992.

(2) Notwithstanding the provisions of paragraph (3), all other provisions of this section shall apply to any case referred under the provisions of this section before December 31, 1997, as though such paragraph had not been enacted.

(3) The provisions of this section are repealed effective on December 31, 1997.

SEC. 102. JUDICIAL IMPACT STATEMENT OF PROPOSED LEGISLATION.

(a) COMMITTEE REPORTED BILLS AND RESOLUTIONS.—Each committee of the Congress shall include with any bill or resolution reported from such committee to the Senate or House of Representatives, a judicial impact statement that represents that the following legislative and judicial impact issues have been considered:

(1) the appropriate statute of limitation;

(2) whether a private cause of action is contemplated;

(3) whether pre-emption of State law is intended;

(4) the definition of key terms;

(5) the mens rea requirement in criminal statutes;

(6) severability of provisions;

(7) whether a proposed bill would repeal or otherwise circumscribe, displace, impair, or change the meaning of existing Federal law;

(8) whether State courts are to have jurisdiction and, if so, whether an action would be removable to Federal court;

(9) the types of relief available;

(10) whether retroactive applicability is intended;

(11) the conditions for any award of attorney's fees authorized;

(12) whether exhaustion of administrative remedies is a prerequisite to any civil action authorized;

(13) the conditions and procedures relating to personal jurisdiction over persons incurring obligations under the proposed legislation;

(14) the viability of private arbitration and other dispute resolution agreements under enforcement and relief provisions; and

(15) whether any administrative proceedings provided for are to be formal or informal.

(b) LEGISLATIVE PROPOSALS BY MEMBERS OF CONGRESS.—To the greatest extent practicable, each Member of Congress shall consider the legislative and judicial impact issues listed under subsection (a)(1) through (15) for any bill or resolution introduced in the Senate or the House of Representatives, and any amendment proposed to a bill or resolution.

(c) RULEMAKING POWER OF CONGRESS.—The provisions of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives and as such shall be considered as part of the rules of each House, and shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedures of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 103. INCLUSION OF THE COURT OF INTERNATIONAL TRADE AND THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT IN THE FEDERAL JUDICIARY BUDGET PROCESS.

(a) BUDGET PROCESS.—In the formulation of the budget submitted by the President under section 1105 of title 31, United States Code, all submissions of budget requests and information related to such formulation for the Court of International Trade and the Court of Appeals for the Federal Circuit shall be made to the Office of Management and Budget through the Federal judiciary in the same manner as a United States court of appeals.

(b) EFFECTIVE DATE.—The provisions of this section shall be effective on the date of the enactment of this Act and shall apply with respect to the formulation of the budget for fiscal year 1992.

SEC. 104. ESTABLISHMENT OF BANKRUPTCY APPELLATE PANELS.

Section 158 (b) and (c) of title 28, United States Code, is amended to read as follows:

"(b)(1) Unless a judicial council establishes a joint panel under the provisions of paragraph (2), the judicial council of each circuit shall establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title.

"(2) The judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine appeals under this subsection.

"(3) A panel established under this section shall consist of 3 bankruptcy judges provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.

"(c) All appeals under this section shall be heard by a bankruptcy appellate panel under subsection (b), unless a party elects to file an appeal under subsection (a). An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.".

SEC. 105. SUPREME COURT AUTHORITY TO PRESCRIBE RULES FOR APPEAL OF FINAL AND INTERLOCUTORY DECISIONS.

(a) APPEAL OF FINAL DECISION.—Section 1291 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "The courts of appeals"; and

(2) by adding at the end thereof the following new subsection:

"(b) The Supreme Court may prescribe rules in accordance with section 2072 of this title, to define a final decision for the purposes of this section.".

(b) APPEAL OF INTERLOCUTORY DECISION.—Section 1292 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) The Supreme Court may prescribe rules in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals, that is not otherwise provided for under subsection (a), (b), (c), or (d).".

SEC. 106. LIMITATIONS ON FEDERAL DIVERSITY JURISDICTION.

Section 1332 of title 28, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out "The district courts" and inserting in lieu thereof "Subject to the provisions of subsection (d), the district courts"; and

(B) by striking out "$50,000" and inserting in lieu thereof "$75,000";

(2) in subsection (b), by striking out "$50,000" and inserting in lieu thereof "$75,000"; and

(3) by redesignating subsection (d) as subsection (f) and inserting after subsection (c) the following:

"(d)(1) Notwithstanding the provisions of subsection (a), a district court shall have original jurisdiction under such subsection, only if the plaintiff in such an action is not a citizen of the State in which such district court is located.

"(2) For the purposes of this section—

"(A) a corporation shall be deemed to be a citizen of each State in which it is licensed or otherwise registered to do business; and

"(B) in determining whether a matter in controversy exceeds the sum or value of $75,000, the amount of damages for pain and suffering or mental anguish, punitive or exemplary damages, and attorney's fees shall not be included.

"(e) On January 1 of each year, the monetary amounts referred to in subsections (a) and (b) shall each be increased by the percentage equal to the percentage increase in the consumer price index for the preceding calendar year as determined by the Bureau of Statistics of the Department of Labor.".

SEC. 107. LIMITATION ON REMOVAL OF CERTAIN ERISA ACTIONS TO FEDERAL COURT.

Section 1445 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) A civil action in any State court arising under section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) may not be removed to any district court of the United States, unless the matter in controversy exceeds $10,000, exclusive of interest and costs.".

SEC. 108. TEMPORARY EMERGENCY COURT OF APPEALS.

(a) APPEALS UNDER ECONOMIC STABILIZATION ACT.—Section 211 of the Economic Stabilization Act of 1970 (Public Law 91-379; 84 Stat. 799) is amended by striking out subsections (b) through (h) and inserting in lieu thereof the following:

"(b) Appeals from orders or judgments entered by a district court of the United States in cases and controversies arising under this title may be brought in the United States Court of Appeals for the Federal Circuit if the appeal is from a final decision of the district court or is an interlocutory appeal permitted under section 1292(c) of title 28, United States Code.".

(b) JUDICIAL REVIEW OF EMERGENCY ORDERS UNDER THE NATURAL GAS POLICY ACT.—Section 506(c) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3416(c)) is amended—

(1) in the first sentence, by striking out "the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended," and inserting in lieu thereof "the United States Court of Appeals for the Federal Circuit"; and

(2) by striking out "Temporary Emergency Court of Appeals" each place it appears and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit".

(c) CONFORMING AMENDMENTS.—Section 1295(a) of title 28, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (9);

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraphs:

"(11) of an appeal under section 211 of the Economic Stabilization Act of 1970;

"(12) of an appeal under section 5 of the Emergency Petroleum Allocation Act of 1973;

"(13) of an appeal under section 506(c) of the Natural Gas Policy Act of 1978; and

"(14) of an appeal under section 523 of the Energy Policy and Conservation Act.".

(d) ABOLITION OF COURT.—The Temporary Emergency Court of Appeals created by section 211(b) of the Economic Stabilization Act of 1970 is abolished effective on June 29, 1991.

(e) PENDING CASES.—(1) Any appeal which, on June 28, 1991, is pending in the Temporary Emergency Court of Appeals but has not been submitted to a panel of such court as of that date shall be assigned to the United States Court of Appeals for the Federal Circuit as though the appeal had originally been filed in that court.

(2) Any case which, as of June 28, 1991, has been submitted to a panel of the Temporary Emergency Court of Appeals and as to which the mandate has not been issued as of that date shall remain with that panel for all purposes and, notwithstanding the provisions of sections 291 and 292 of title 28, United States Code, that panel shall be assigned to the United States Court of Appeals for the Federal Circuit for the purpose of deciding such case.

SEC. 109. TRANSFER OF JURISDICTION FOR SUPERVISED RELEASE REVOCATION HEARINGS FROM DISTRICT COURTS TO THE UNITED STATES PAROLE COMMISSION.

(a) REVOCATION OF RELEASE.—Section 3148(b) of title 18, United States Code, is amended—

(1) by striking "district court" at the end of the first sentence and inserting "United States Parole Commission".

(2) by striking "judicial officer" and inserting "hearing officer" each place it appears.

(b) PROSECUTION FOR CONTEMPT.—Section 3148 of title 18, United States Code, is amended by striking subsection (c).

(c) HEARING OFFICERS.—Section 3148 of title 18, United States Code, as amended by subsection (b) of this section, is amended by adding at the end thereof the following:

"(c) The United States Parole Commission shall assign duly licensed attorneys as hearing officers in revocation hearings under this section.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all actions filed or matters commencing on or after the date of enactment of this Act.

SEC. 110. REQUIREMENT OF EXHAUSTION OF STATE REMEDIES PRIOR TO FILING OF STATE PRISONER SUITS BROUGHT UNDER SECTION 1997 OF THE REVISED STATUTES.

(a) 120-DAY PERIOD FOR EXHAUSTION.—Section 7(a)(1) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e(a)(1)), is amended by striking "ninety" and inserting "120".

(b) MANDATE OF FAIR AND EFFECTIVE ADMINISTRATIVE REMEDY PROCEDURES.—Section 7(a)(2) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e(a)(2)), is amended to read as follows:

"(2)(A) A State shall enact fair and effective administrative procedures and remedies for inmate grievances not later than 2 years after the date of enactment of this paragraph.

"(B) A State shall submit the administrative procedures and remedies established pursuant to subparagraph (A) to the Attorney General or the appropriate United States district court for certification and approval upon the promulgation of the procedures and remedies. The State shall have the burden of establishing that the procedures and remedies are fair and effective.".

(c) REPEAL OF GRIEVANCE RESOLUTION STANDARDS.—Section 7(b) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e(b)) is repealed.

(d) REVIEW AND CERTIFICATION BY ATTORNEY GENERAL OR UNITED STATES DISTRICT COURT.—Section 7(c) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e(c)), is amended to read as follows:

"(b) The Attorney General shall develop procedures for the prompt review and certification of systems for the resolution of grievances of adults confined in any jail, prison, or other correctional facility, or pretrial detention facility developed as required under subsection (a)(2), to determine if such systems are fair and effective in assuring the rights of such inmates.".

(e) REPEAL OF SECTION 7(d) OF THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT.—Section 7(d) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e(d)) is repealed.

SEC. 111. JURISDICTIONAL LIMITATIONS ON SUITS BROUGHT UNDER THE FEDERAL TORTS CLAIMS ACT.

(a) IN GENERAL.—Section 2671 of title 28, United States Code, is amended by—

(1) inserting "**and jurisdiction**" after "**definitions**" in the section heading;

(2) inserting "(a)" before the first sentence; and

(3) adding at the end thereof the following:

"(b) United States Magistrates shall have original jurisdiction over any claim under $10,000 filed under this chapter.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 171 of title 28, United States Code, is amended by striking the item for section 2671 and inserting the following:

"2671. Definitions and jurisdiction.".

TITLE II—NATIONAL COMMISSION ON FEDERAL CRIMINAL LAW REFORM

SEC. 201. SHORT TITLE.

This subtitle may be cited as the "National Commission on Federal Criminal Law Reform Act of 1991".

SEC. 202. ESTABLISHMENT.

There is hereby established a commission to be known as the "National Commission on Federal Criminal Law Reform" (hereafter in this Act referred to as the "Commission").

SEC. 203. DUTIES OF COMMISSION.

The duties of the Commission are to—

(1) perform a comprehensive study of the Federal criminal laws in title 18, United States Code and draft a proposed recodification of such title; and

(2) coordinate, cooperate, and exchange information with the Congress, the judiciary, and the Department of Justice in undertaking such recodification.

SEC. 204. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 13 members as follows:

(1) Three appointed by the President pro tempore of the Senate.

(2) Three appointed by the Speaker of the House of Representatives.

(3) Three appointed by the Chief Justice of the United States.

(4) Three appointed by the President.

(5) One appointed by the Conference of Chief Justices of the States of the United States.

(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

(c) QUORUM.—Six members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(d) CHAIRMAN.—The members of the Commission shall select one of the members to be the Chairman.

(e) APPOINTMENT DEADLINE.—The first appointments made under subsection (a) shall be made within 60 days after the date of the enactment of this Act.

(f) FIRST MEETING.—The first meeting of the Commission shall be called by the Chairman and shall be held within 90 days after the date of the enactment of this Act.

(g) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(h) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as a Member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was appointed from persons who are not officers or employees of a government becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

SEC. 205. COMPENSATION OF THE COMMISSION.

(a) PAY.—(1) Except as provided in paragraph (2), each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during which he is engaged in the actual performance of duties as a member of the Commission.

(2) A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

(b) TRAVEL.—All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 206. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) DIRECTOR.—The Commission shall, without regard to section 5311(b) of title 5, United States Code, have a Director who shall be appointed by the Chairman and who shall be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

(b) STAFF.—The Chairman of the Commission may appoint and fix the pay of such additional personnel as the Chairman finds necessary to enable the Commission to carry out its duties. Such personnel 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, except that the annual rate of pay for any individual so appointed may not exceed a rate equal to the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

(c) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

SEC. 207. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission or, on authorization of the Commission, a member of the Commission may, for the purpose of carrying out this subtitle, hold 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 or affirmations to witnesses appearing before it.

(b) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department, agency, or entity within the executive or judicial branch of the Federal Government information necessary to enable it to carry out this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of any Federal agency is authorized to make any of the facilities and services of such agency available to the Commission to assist the Commission in carrying out its duties under this subtitle.

(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Com-

mission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

(e) 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.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 208. REPORT.

The Commission shall submit to each House of Congress, the Chief Justice of the United States, and the President a report not later than one year after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its estimate for the completion of a proposed draft for a recodification of title 18, United States Code.

SEC. 209. TERMINATION.

The Commission shall cease to exist on the earlier of—

(1) the date the Commission submits a proposed draft for recodification of title 18, United States Code, to each House of Congress, the Chief Justice of the United States, and the President; or

(2) three years after the date of the enactment of this Act.

SEC. 210. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $5,000,000 to carry out the provisions of this title.

By Mr. JOHNSTON:

S. 1495. A bill to provide for the establishment of the St. Croix, Virgin Islands Historical Park and Ecological Preserve, and for other purposes; to the Committee on Energy and Natural Resources.

ST. CROIX, VIRGIN ISLANDS HISTORICAL PARK AND ECOLOGICAL PRESERVE ACT

• Mr. JOHNSTON. Mr. President, many people are aware of the approach of the 500th anniversary of the discovery of America by Christopher Columbus, but very few people are aware of the date and the site at which the Columbus expedition landed on what is now U.S. soil. The date was November 14, 1493, and the site was even then noted for its beauty. An account of that first visit by Europeans to what is now U.S. soil was recorded by Michele de Cuneo, who led the first party ashore: " * * * very beautiful and very fertile and we arrived at a beautiful harbor." That harbor is now known as Salt River Bay and is located on the north shore of St. Croix in the U.S. Virgin Islands.

Salt River Bay has many other qualities of distinction. It is known to archeologists as an area of significant precolumbian development with evidence of villages, burial grounds, and the only ceremonial ball court in the Lesser Antilles. Since the first visit by Columbus, Salt River Bay was also the site of Spanish, French, Dutch, English, and Danish settlements, making it one of the few single sites with archeological evidence from each of the many periods in the history of the Virgin Islands.

Finally, Salt River Bay has tremendous ecological significance. The upper bay is the largest and last remaining mangrove estuarine system in the Virgin Islands. This system provides critical habitat for a variety of fish and bird species. The lower bay features one of the few carbonate submarine canyons in the world and which is one of the most thoroughly studied underwater habitats in the world. For many years, Salt River Canyon was the home of Hydrolab, an underwater manned research station operated by the National Oceanic and Atmospheric Administration. The Hydrolab is now retired and sits on display in the Smithsonian's Museum of Natural History just a few blocks from the Capitol on the Mall. But for years Hydrolab rested beneath the waters of Salt River Bay hosting marine scientists from around the Nation as they studied the Bay.

Mr. President, as a regular visitor to the U.S. Virgin Islands, and as a recent visitor to Salt River Bay, I can attest to its special beauty and significance. It is this personal experience that gives me particular pleasure in introducing the St. Croix, Virgin Islands Historical Park and Ecological Preserve Act of 1991. Enactment of this legislation would be a major step toward protecting and managing the historical and ecological assets of the bay for future generations. This bill would establish a park of just over 1,000 acres including 600 acres of water. While this would be a small park when compared with many other proposals which come before Congress, the unusual historical and ecological richness of the site justifies its special consideration.

I am very pleased that this bill is introduced with broad support both here in Washington, and in the Virgin Islands. The distinguished Delegate from the Virgin Islands deserves recognition for his foresight in making this legislation a priority, and for his hard work in negotiating its terms for introduction. Earlier this week I met with the Lieutenant Governor of the Virgin Islands, the Honorable Derek Hodge, and we discussed several initiatives to diversify and strengthen the economy of St. Croix. A park at Salt River Bay serves both those objectives. Earlier this year, the President of the Virgin Islands Senate, the Honorable Virdin Brown, visited Washington to lobby for the protection of Salt River Bay and for Federal support in strengthening the local territorial park system. His ideas are also reflected in this legislation. Just yesterday, I met with the Secretary of the Interior and I was pleased to hear first hand of his commitment to preserve Salt River Bay. His continued support will be invaluable in making this park a success. Finally, I would like to recognize the Nature Conservancy, and the National Parks and Conservation Association, for their initiative and for their contributions to the development of this legislation.

Mr. President, this bill would help to protect historical and ecological assets of importance not only to the people of the Virgin Islands, but to all Americans. Indeed, the history of Columbus' voyages of discovery are of international significance. I'm pleased with the broad support shown for this bill and I urge my colleagues to join this support for its enactment.•

By Mr. LAUTENBERG (for himself and Mr. BRADLEY):

S. 1496. A bill to suspend temporarily the duty on ofloxacin; to the Committee on Finance.

SUSPENSION OF DUTY ON OFLOXACIN

• Mr. LAUTENBERG. Mr. President, I rise to introduce, on behalf of myself and Senator BRADLEY, a bill to suspend duties on ofloxacin. The same bill has been introduced in the House of Representatives by Representative DWYER.

The bill would suspend for 3 years the duty on ofloxacin, a broad spectrum antibiotic used for the treatment of adults with lower respiratory tract infections, skin and skin structure infections, prostatitis, and sexually transmitted diseases.

According to the International Trade Commission, there is currently no domestic production of ofloxacin, and the product must be imported to meet U.S. demand. Consequently no domestic manufacturer would be injured by this tariff suspension. Import duties on ofloxacin simply add to the overall production costs of downstream consumer products, costs which consumers of this medication ultimately must bear.

Johnson & Johnson, in my State, employs over 80 people to process the imported bulk ofloxacin into finished antibiotic product. These jobs depend on the continued economic viability of producing the finished product in this country. By suspending the 6.9-percent duty, we would help those workers compete with foreign manufacturers of the finished product.

For these reasons, I urge my colleagues to act swiftly to pass this bill. I ask unanimous consent that the text of the bill be printed in the RECORD at the conclusion of this statement.•

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

S. 1496

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TEMPORARY DUTY SUSPENSION.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Trariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"9902.31.12	(+)-9-Flouro- 2,3-dihydro-3-methyl-10- (4-methyl-1-piperazinyl)- 7-oxo-7h- pyrido [1,2,3,- de]-1,4 benzoxazine-6-carboxylic acid (provided for in subheading 2934.90.25)	Free .	No change ..	No change .	On or before 12/31/94"

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

By Mr. METZENBAUM (for himself, Mr. DURENBERGER, Mr. LEVIN, Mr. GLENN, and Mr. WELLSTONE):

S. 1497. A bill entitled the "Great Lakes Protection Act of 1991"; to the Committee on Environment and Public Works.

GREAT LAKES PROTECTION ACT

Mr. METZENBAUM. Mr. President, I rise to introduce the Great Lakes Protection Act of 1991. This legislation will help reverse long-term environmental degradation and restore ecological health to the Great Lakes. Senators DURENBERGER, LEVIN, GLENN, and WELLSTONE join me in cosponsoring this measure.

We've come a long way from the days when Lake Erie was said to be dead or, at least, dying. Gratefully, we are no longer confronted with the spectacle of burning rivers and lakes choked with oil and debris.

Just one look at any of the lakes tells you we've made progress. Regulatory and cooperative efforts to rein in polluters and curtail pollution has paid off.

But much more needs to be done in order to protect what is without doubt one of the Nation's most valuable and precious natural resources.

More than 35 million people live within the Great Lakes basin, over 27 million Americans and nearly 8 million Canadians. The five Great Lakes stretch over 1,000 miles along the boundary between the United States and Canada.

These freshwater lakes continue to be a vital avenue for regional, national and international shipping. They are a source of drinking water for millions and a fisheries source serving sports and commercial fishermen alike. Home to diverse and countless wildlife and plants, the lakes are also a recreational and aesthetic resource of world acclaim.

But the Great Lakes are still threatened by habitat destruction and long-term accumulation of toxic chemicals.

Untreated sewage, industrial discharges of toxic pollutants, and pollution from agricultural and urban runoff still threaten these waterways.

Nitrates and persistent toxics—like PCB's and dioxin—are still entering Lake Erie and the other Great Lakes at unacceptable levels. Exposure to these toxics threatens pregnant women and their fetuses, causes health problems and increased cancer risks to millions, and causes wildlife populations to decline.

Right now, you can safely swim and fish in only 1 in 12 miles of Great Lakes shoreline. According to EPA's water quality inventory, you can safely fish in only 3 in 10 miles. Thousands of acres of underwater sediment are contaminated by toxic pollutants dumped by factories, sewage treatment plants, hazardous wastesites, and other sources. In fact, these sediments are one of the main reasons for fishing restrictions in the lakes. Improper dredging and disposal of these contaminated sediments causes further harm.

Mr. President, we have some tough environmental problems on the lakes. But they are not insurmountable.

The comprehensive legislation which I am introducing today along with Senators DURENBERGER, LEVIN, GLENN, and WELLSTONE will focus attention on many of these problems including contaminated sediments and the improper dredging and disposal of such sediments. The following is a brief summary of some of the major provisions.

Contaminated sediments.—Toxic pollutants like PCB's, DDT, mercury, and dioxin are winding up in the bottoms of the lakes. These contaminated sediments pose significant health threats to fish, wildlife, and humans through foodchain and/or direct exposure. The bill being introduced today will authorize U.S. EPA to develop numerical criteria for a wide range of contaminants in sediment to protect wildlife, aquatic life, and human health. The bill will also require States to adopt sediment standards within 2 years of publication of such criteria and assures that sediment standards will be fully integrated into State and Federal water quality programs. The numerical criteria will be very valuable as a base for measuring the effectiveness of remediation and for determining the impact of dredged material disposal on the lakes.

Open water disposal of contaminated sediments and confined disposal facilities.—In order to protect the Great Lakes aquatic ecosystems, and the important fisheries, wildlife, and recreation values they support, this bill will end the open lake disposal of contaminated dredged materials by 1994. The bill also places tighter restrictions on where clean dredgings can be placed in an effort to protect municipal and water supply intake zones and to preserve fish spawning and recreational areas. And, in order to ensure the safety of confined disposal facilities where contaminated dredgings are dumped, the legislation will establish more stringent siting and environmental monitoring requirements for these facilities.

Remedial action plans and lakewide management plans.—Forty-three areas of concern have been identified along the Great Lakes where conditions are particularly degraded and the toxic contamination is particularly egregious. These sites include major municipal and industrial centers on rivers, harbors, and connecting channels. The Great Lakes States, along with Canada in some instances, are developing remedial action plans for each area of concern to help restore the environmental health and integrity of these submerged sites. The costs of remediation are going to be in the billions of dollars. Yet these submerged sites have been virtually ignored under the Superfund Program, a program which could help address the high cost and technical problems associated with cleaning them up. This legislation would change that by giving these sites higher priority under the Superfund Program.

The bill will also enable States to use State revolving loan funds for RAP implementation. In addition, the bill requires that comprehensive lakewide management plans be developed and completed for all of the Great Lakes by 1997.

Pollution prevention.—Focusing chiefly on the cleanup of polluted areas in the lakes will not be enough. We need to stop pollution at its source. This legislation will create a Pollution Prevention Demonstration Program to provide incentives, such as a waiver from new effluent guideline fees, to individuls who install pollution prevention technologies which achieve a 75-percent reduction in overall pollution discharge levels from the preceding year. The bill will also create a pollution prevention extension service to provide an active outreach effort to advise others about pollution prevention techniques.

Fish advisories.—PCB's and other toxic chemicals—including pesticides such as chlordane, combustion byproducts such as dioxins, and metals such as mercury—are found in sport fish throughout the Great Lakes and have been linked to cancer and numerous reproductive, neurological, and developmental problems in Humans. Yet according to a recent Plain Dealer article "Many anglers have tuned out official advisories on the danger of eating Great Lakes fish because of conflicting, disparate information." In Michigan, Ohio, and Pennsylvania waters of Lake Erie, for example, anglers are warned not to eat carp and catfish at all. In New York waters, anglers are advised not to eat more than a meal per week of those species. In another example, anglers fishing the Minnesota waters of Lake Superior were advised not to eat more than one meal of lake trout a month. But in neighboring Wisconsin waters, there was no advisory on lake trout up to 30 inches in length.

This bill will end such confusion by authorizing EPA to publish uniform fish consumption advisories which are adequate to protect sensitive populations such as pregnant women and those who consume large quantities of fish each week.

Mr. Chairman, this legislation attempts to address some of the major clean water-related issues currently affecting the Great Lakes basin. It should be viewed as a complement to S. 1081, the clean water reauthorization bill introduced by Senators BAUCUS and CHAFEE. It also fits well with Great Lakes legislation introduced by Senator GLENN dealing with reducing sedimentation at its source. I look forward to working with my colleagues on the Senate environment and Public Works Committee along with Senators from the Great Lakes region who are not on the committee to enact a Great Lakes package as part of the larger effort underway to reathorize the Clean Water Act.

I ask unanimous consent that the bill and a section-by-section analysis of it be printed in the RECORD at this point.

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

S. 1497

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE AND TABLE OF CONTENTS

SECTION 1(a) TITLE.—This Act may be cited as the "Great Lakes Protection Act of 1991".

(b) TABLE OF CONTENTS.—

Sec. 1 Title and Table of Contents.
Sec. 2 Findings.
Sec. 3 Sediment Quality Criteria and Standards.
Sec. 4 Confined Disposal Facilities.
Sec. 5 Remedial Action Plans.
Sec. 6 Lakewide Management Plans.
Sec. 7 Pollution Prevention.
Sec. 8 Fish Advisories.
Sec. 9 Great Lakes Policy Committee.
Sec. 10 Great Lakes Research.
Sec. 11 State Revolving Funds.
Sec. 12 Authorizations.

FINDINGS

SEC. 2. FINDINGS.—The Congress finds that—

(1) The Great Lakes form the largest freshwater system on Earth and represent 95 percent of the freshwater supply of the United States.

(2) The Great Lakes are a natural resource of vital ecological, recreational, and economic importance on the local, interstate and international level.

(3) The Environmental Protection Agency reports significant water quality problems in the Great Lakes. Seventy-three percent of Great Lakes shoreline miles do not fully support designated water quality.

(4) Toxic pollutants in Great Lakes water and sediment and fish caught on the local level pose a significant threat to wildlife and human health on the interstate level. Recent studies indicate that consumption of contaminated fish from the Great Lakes poses a risk of cancer and a risk of fetuses.

(5) Implementation of pollution control programs by international organizations, Federal agencies, and States has contributed to some improvements in Great Lakes water quality and the ongoing development of Remedial Action Plans for identified Areas of Concern and Lakewide Management Plans for the lakes will continue water quality improvements.

(6) New water pollution control authorities are needed to supplement ongoing activities to protect the Great Lakes and to fulfill commitments to Canada under the Great Lakes Water Quality Agreement, including expanded authority for water and sediment quality standards, better management of confined disposal facilities, improved authority for development and implementation of Lakewide Management Plans and Remedial Action Plans, and improved pollution prevention programs.

SEDIMENT QUALITY CRITERIA AND STANDARDS

SEC. 3. (a) GREAT LAKES SEDIMENT QUALITY CRITERIA AND STANDARDS.—(1) Section 118(c)(7) of the Federal Water Pollution Control Act (33 USC 1258(c)(7)) is amended by adding after "toxins" the following—

"with an adequate margin of safety to take into account the additional toxic effect, either additive or in synergistic combination, of other pollutants in the same area of contaminated sediments and other pollutants in nearby bodies of water".

(2) Section 118(c)(7)) of the Federal Water Pollution Control Act (33 USC 1258(c)(7)) is amended by adding at the end thereof the following new subparagraph—

"(D) Within two years of publication of criteria and information pursuant to subparagraph (C) of this paragraph, each Great Lakes State shall adopt sediment quality standards for Great Lakes sediment. Such sediment quality standards shall be consistent with subparagraph (C) and section 303 of this Act, shall have the force and effect of standards adopted pursuant to section 303, and shall be managed and implemented in conjunction with standards adopted pursuant to section 303.

"(E) If a Great Lakes State fails to adopt sediment standards pursuant to this paragraph the Administrator shall promulgate such standards not later than the end of the two-year period specified in subparagraph (D).".

(b) NUMBER OF CONTAMINANT CRITERIA.—(1) Section 118(c)(7)(C) of the Federal Water Pollution Control Act (33 USC 1258(c)(7)(C)) is amended by adding after "pursuant to this paragraph" the following "for not less than 20 contaminants". (2) Section 118(c)(7)(C) of the Federal Water Pollution Control Act (33 USC 1258(c)(7)(C)) is amended by inserting after "Title" the following "and for additional contaminants of concern as expeditiously as practicable".

CONFINED DISPOSAL FACILITIES

SEC. 4. (a) CODIFICATION.—(1) Amend Section 115 of the Federal Water Pollution Control Act (33 USC 1265) by deleting all after "SEC. 115." and inserting in lieu thereof 33 USC 1293(a).

(2) The heading of section 115 of the Federal Water Pollution Control Act (33 USC 1265) is amended by striking "In-Place Toxic Pollutants" and inserting "Confined Disposal Facilities".

(b) PROHIBITION ON OPEN LAKE DUMPING.—Section 115(a) of the Federal Water Pollution Control Act (33 USC 1265(a)) is amended by inserting after "(a)" the following "(1)" and adding at the end thereof the following new paragraph—

"(2) After October 1, 1994, it shall be unlawful to dump or otherwise dispose of dredge spoil at any location in the waters of the Great Lakes other than a confined spoil facility established pursuant to this section.

"(3) The Administrator may waive the requirement to dispose of dredge material at a confined disposal facility based on a finding that the material to be disposed of—

"(A) does not contain contaminants at levels in excess of levels established in sediment quality standards pursuant to section 118(c)(7)(D) of this Act;

"(B) will not result in a violation of water or sediment quality standards;

"(C) will not degrade the chemical, physical, and biological characteristics of the substrate;

"(D) is done in a manner which is consistent with an approved Coastal Zone Management Plan for the State or States bordering the Lake in which the disposal occurs.

"(E) will be disposed of at a site which is;

(i) removed from the vicinity of municipal and private water supply intake zones;

(ii) removed from recognized commercial or recreational fishing grounds and from spawning, nursery, food supply or migration areas on which fish depend for their life processes;

(iii) in a non-erosive section of the lake to prevent the spread of material to areas outside the disposal area;

(iv) removed from areas of aesthetic and recreational value; and

The Administrator shall also take into consideration disposal sites which further wetlands protection, erosion control and water quality improvements.

"(4) Any person violating this provision shall be subject to a civil penalty pursuant to section 309 of this Act.".

(c) DESIGNATION OF CONFINED DISPOSAL FACILITIES.—(1) Section 115(b) of the Federal Water Pollution Control Act is amended by inserting "(1)" after "(b)" and adding at the end thereof—

"(2) After October 1, 1992, no new confined disposal facility shall be established without the concurrence of the Administrator and without providing for public review and comment. In concurring in such establishment, the Administrator shall find that the facility is not likely to result in violation of water or sediment quality standards or prevent the protection and propagation of a balanced, indigenous population of fish, shellfish and wildlife.

"(3) Not later than October 1, 1994, the Administrator shall review the operation of each confined disposal facility established pursuant to this section and assess the environmental consequences of continued operation of such facility. The Administrator shall terminate any future use of any existing facility based on a finding that continued operation of the facility is likely to result in violation of water or sediment quality standards or prevent the protection and propagation of a balanced, indigenous population of fish, shellfish and wildlife.

"(4)(A) Not later than October 1, 1994, the Administrator of the Environmental Protection Agency shall develop and implement management plans for confined disposal facilities not terminated pursuant to paragraph (3). Management plans shall be reviewed and revised every 5 years.

"(B) Management plans shall provide for monitoring of such facilities, including monitoring of—

"(i) water quality at the site and in the area of the site;

"(ii) sediment quality at the site and in the area of the site;

"(iii) the diversity, productivity, and stability of aquatic organisms at the site and in the area of the site;

"(iv) tissue of organisms living in the vicinity of the sites for potential bioaccumulation of toxic pollutants; and

"(v) such other conditions as the Administrator deems appropriate.

"(C) Management plans shall identify the anticipated use and management of the site over the following twenty-year period including the expected termination of dumping at the site, the anticipated need for site management, including pollution control, following the termination of the use of the site.

"(D) The plan shall identify a schedule for review and revision of the plan which shall not be less frequent than five years after adoption of the plan and every five years thereafter.".

(2) Section 118(c)(11) of the Federal Water Pollution Control Act (33 USC 1254(c)(11)) is repealed.

(e) PERMIT REQUIREMENT.—Section 115 of the Federal Water Pollution Control Act (33 USC 1265) is amended by adding the following new subsection after subsection (g) and relettering remaining sections accordingly—

"(h) PERMIT REQUIREMENT.—(1) Beginning on October 1, 1994, any person disposing of dredge spoil shall obtain a permit specifying conditions for such disposal from the Administrator.

"(2) Permits issued pursuant to this subsection shall specify such conditions as are necessary to assure that disposal will be consistent with the management plan for a confined disposal facility.

"(3) Permits shall be issued for the term of the disposal activity, provided that no permit is issued for a period greater than six months.

"(4) Permits shall include such conditions concerning monitoring and assessment as are necessary to determine compliance with the permit.".

(d) RESPONSIBILITY OF THE ADMINISTRATOR.—(1) Section 115(c) of the Federal Water Pollution Control Act (33 USC 1265(c)) is amended by adding after "Secretary of the Army" the following "and the Administrator".

(2) Section 115(f) of the Federal Water Pollution Control Act (33 USC 1265(f)) is amended by adding after "Secretary of the Army" the following "and the Administrator".

REMEDIAL ACTION PLANS

SEC. 5. (a) MEMORANDUM OF UNDERSTANDING.—Section 118(f) of the Federal Water Pollution Control Act (33 USC 1268(f)) is amended by inserting after "Interagency Cooperation" the following "(1)" and adding at the end thereof the following new paragraph—

"(2) Upon the submittal of a Remedial Action Plan to the Program Office pursuant to paragraph (c)(3), the Administrator shall work with other appropriate Federal agencies including but not limited to those named in the stage II portion of the Remedial Action Plan, to develop a Federal Agency Memorandum of Understanding describing actions Federal agencies will take to support implementation of the plan for the area of concern. Such memorandum of understanding shall be submitted to the International Joint Commission in conjunction with the submission of the Remedial Action Plan.".

(b) REMEDIATION OF CONTAMINATED SEDIMENT.—Notwithstanding any other provision of law or regulation, any contaminated aquatic sediment site assessed under the hazard ranking system of the Comprehensive Environmental Response, Compensation and Liability Act which is part of a designated Area of Concern within the Great Lakes, or contributes pollutants to an area of concern, as of July 1, 1991 shall be awarded 10 points in such ranking and such points shall be in addition to any points which would otherwise be awarded to such site under such system.

(c) TECHNICAL CORRECTION.—Section 118(f) of the Federal Water Pollution Control Act (33 USC 1268(f)) is amended by deleting "1978" and inserting in lieu thereof "1987 and any subsequent amendments or agreements.".

LAKEWIDE MANAGEMENT PLANS

SEC. 6. Section 118(c)(4) of the Federal Water Pollution Control Act (33 USC 1268(c)(4)) is amended to read as follows—

"(4) LAKEWIDE MANAGEMENT PLANS.—(A) The Administrator shall submit to the International Joint Commission a Lakewide Management Plan for Lake Michigan not later than January 1, 1993 and proposed Lakewide Management Plans for the other Great Lakes not later than January 1, 1996. The Administrator shall publish final plans within one year of submittal to the International Joint Commission and begin implementation.

"(B) Lakewide Management Plans shall be consistent with the requirements of Annex 2 of the Great Lakes Water Quality Agreement, and shall include, at a minimum—

"(i) assess the environmental condition of the lake, including water and sediment quality and natural resources;

"(ii) identify the toxic pollutants exceeding water or sediment quality standards in the lake, describe the loadings of such pollutants to the lake, including conventional, non-conventional and toxic pollutants and identify the point and nonpoint sources of such pollutants;

"(iii) provide a comprehensive protection plan recommending specific actions to restore and maintain the chemical, physical, and biological integrity of the lake. Such a comprehensive protection plan shall include the specific measures to protect and maintain high quality waters and an identification of the reduction in loadings of pollutants identified in (ii) to assure the restoration and attainment of water and sediment quality standards, and the protection and propagation of a balanced indigenous population of fish, shellfish, and wildlife and recreation in and on the water; and

"(iv) indicate the schedule for implementing recommended actions including the identification of the agencies and sources responsible for implementing the loading reductions, and the funding sources to support such implementation.

"(C) Lakewide Management Plans shall be developed in cooperation with the State or States bordering the lake including the public in those States, and with appropriate representatives of Canada and shall be developed in consultation with the Great Lakes Policy Committee.".

POLLUTION PREVENTION

SEC. 7. Section 118 of the Federal Water Pollution Control Act (33 USC 1268) is amended by adding after subsection (g) the following new subsection and relettering the remaining subsections accordingly—

"(h)(1) The Administrator, acting through the Great Lakes Program Office, and in coordination with the National Institute of Standards and Technology, and the Great Lakes States, shall establish a Great Lakes Pollution Prevention Technology Demonstration Program to increase the use of modernizing industrial pollution prevention technologies through technology demonstration in the Great Lakes region.

"(2) The Administrator shall, within one year of the date of enactment of this subsection, develop a list of modernizing toxic use and waste reduction technologies requiring demonstration. This list may include innovative production processes, and alternative products or raw materials that reduce, avoid or eliminate toxic or hazardous inputs or by-products.

(3) Any person with a permit to discharge to waters of the Great Lakes system pursuant to section 402 of this Act may participate in the demonstration program through—

(A) the installation of a pollution prevention technology from the list developed under this section to reduce pollutant discharges, or

(B) the installation of other pollution prevention technology that will reduce pollutant discharges to water by 75% from the discharges in the preceeding year without significant shifting of pollutants to other environmental media.

"(4) Any participant in the demonstration program shall—

"(A) be exempt from the requirement under Section 308 of this Act to pay a fee for the development of revised effluent guidelines; and

"(B) may be granted an additional year to comply with any new or revised effluent standards issued under this Act if, in the judgment of the Administrator, such extension is necessary and appropriate.

"(5) The Administrator shall establish a Pollution Prevention Extension Service to provide an active outreach effort to advise, inform and encourage pollution prevention by industrial discharges to the Great Lakes system.

"(6) The Administrator shall establish a Great Lakes Pollution Prevention Clearinghouse. The Clearinghouse shall utilize research from the EPA Risk Reduction Engineering Laboratory and shall provide information to municipal and industrial dischargers and sources of nonpoint pollution with information on methods, measures, techniques, and technologies to reduce toxics use.".

FISH ADVISORIES

SEC. 8. Section 118(c) of the Federal Water Pollution Control Act (33 USC 1265(c)) is amended by adding at the end thereof the following new paragraph—

"(12) The Administrator, in consultation with appropriate Federal and State agencies and other interested persons, shall publish contaminated finfish and shellfish consumption advisories for appropriate areas of the Great Lakes System and appropriate classes of fish and shellfish which are adequate to protect recreational and subsistence fishermen and pregnant and nursing women and their offspring. The Administrator may delegate to the States responsibility for issuance of advisories. Nothing in this paragraph shall preclude a State from establishing a more stringent basis for advising against fish or shellfish consumption. Copies of any advisories issued pursuant to this paragraph shall be distributed with fishing licenses in each Great Lakes State and be provided to appropriate public health officials in each State.".

GREAT LAKES POLICY COMMITTEE

SEC. 9. Section 118(e) of the Federal Water Pollution Control Act (33 USC 1268(e)) is amended to read as follows—

"(e) GREAT LAKES POLICY COMMITTEE.—(1) There is hereby established a Great Lakes Policy Committee to advise the Administrator and the heads of other Federal agen-

cies identified in subsection (f) on development and implementation of programs for the protection of the Great Lakes.

"(2) Membership of the Committee shall include—

"(A) a representative of each Great Lakes State appointed by the Governor of such State;

"(B) three representatives of public interest or environmental organizations;

"(C) three representatives of industry;

"(D) three representatives of local government;

"(E) three representatives of the public.

"(3) The Director of the Great Lakes Program Office shall serve as ex-officio member of the Committee. The Great Lakes Program Office shall serve as staff to the Committee.

"(4) Members of the Great Lakes Policy Committee shall be appointed by the Administrator and shall serve not more than two terms of three years each. Members of the Committee shall select a Chairman on an annual basis.

"(5) The Committee shall advise the Administrator on all aspects of Great Lakes Program implementation including but not limited to allocation of funds, scheduling of programs and projects, establishment of research priorities, and oversight of State programs.".

GREAT LAKES RESEARCH PROGRAM

SEC. 10. (a) RESEARCH PROGRAM.—Section 118(d) of the Federal Water Pollution Control Act (33 USC 1268(d)) is amended to read as follows—

"(d) GREAT LAKES RESEARCH.—(1) Within one year of the date of enactment of the Great Lakes Protection Act of 1991 and every two years thereafter, the Administrator and the Administrator of the National Oceanic and Atmospheric Administration shall jointly submit to the Congress a three year plan for monitoring and research activities in the Great Lakes. These agencies shall coordinate with other federal agencies involved in Great Lakes research for purposes of developing the Research Plan. The Research Plan shall—

"(A) describe environmental trends and conditions in the Great Lakes and summarize water quality issues;

"(B) identify priority research needs related to protection of the Great Lakes, including activities needed to meet commitment in the Water Quality Agreement of 1987 and any subsequent agreements or amendments;

"(C) identify the research and monitoring activities of other countries, States, and other parties; and

"(D) identify the priority research and monitoring activities to be conducted by the EPA and NOAA to complement activities of other agencies and assure that priority needs are addressed to the fullest extent practicable.

"(2) There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office. The Research Office shall be located in a Great Lakes State and shall, in coordination with the International Joint Commission, the EPA, and other appropriate federal agencies—

"(A) conduct appropriate research and monitoring activities provided for in the Great Lakes Research Plan;

"(B) establish a Great Lakes research exchange to facilitate the rapid identification, dissemination, and use of information concerning research on the Great Lakes; and

"(C) develop a comprehensive environmental data base for the Great Lakes system, including data on water quality, fisheries, and boita.".

STATE REVOLVING FUNDS

SEC. 11. (a) ELIGIBILITY.—(1) Section 601(a) of the Federal Water Pollution Control Act (33 USC 1381(a)) is amended by deleting "and" the first place it occurs and inserting after "section 320" the following "; and (4) for implementing Lakewide Management Plans and Remedial Action Plans developed pursuant to section 118 of this Act.".

(2) Section 603(c) of the Federal Water Pollution Control Act (33 USC 1383(c)) is amended by deleting "and" the first place it occurs and inserting after "section 320 of this Act" the following"; and (4) for implementing Lakewide Management Plans and Remedial Action Plans developed pursuant to section 118 of this Act.".

(b) PENALTIES.—Section 601 of the Federal Water Pollution Control Act (33 USC 1381) is amended by adding at the end thereof the following new subsection—

"(c) ADDITIONAL CAPITALIZATION FUNDS.—Notwithstanding any other provision of law, any penalty resulting from an enforcement action pursuant to section 309 of this Act involving a discharge into the Great Lakes System shall be deposited by the violator into the revolving loan fund established pursuant to this title of the State in which the discharge occurred. Funds deposited in State revolving loan funds pursuant to this subsection shall, to the extent practicable, be used to support implementation of plans, programs, and projects to benefit the water quality of the Great Lakes.".

AUTHORIZATIONS

SEC. 12. (a) AUTHORIZATION.—Section 118(h) of the Federal Water Pollution Control Act (33 USC 1268(h)) is amended by deleting all after "$25,000,000" in the first sentence and inserting in lieu thereof "$46 million in fiscal year 1992 and 1993, $48 million in fiscal year 1994, $50 million in fiscal year 1995, $52 million in fiscal year 1996, $54 million in fiscal year 1997 and $56 million in fiscal year 1998.".

(b) ALLOCATION.—The last sentence of section 118(h) of the Federal Water Pollution Control Act (33 USC 1268(h)) is amended to read as follows—

"Of the amounts appropriated each fiscal year—

"(A) 20 percent shall be reserved for development and implementation of plans and projects pursuant to paragraph (c)(3) of this section;

"(B) 20 percent shall be reserved for development and implementation of plans and projects pursuant to paragraph (c)(7) of this section;

"(C) 10 percent shall be reserved for implementation of pollution prevention activities pursuant to subsection (h) of this section; and

"(D) 10 percent shall be reserved for implementation of research identified in the Great Lakes Research Plan developed pursuant to subsection (d).".

SECTION BY SECTION ANALYSIS OF GREAT LAKES PROTECTION ACT

Section 1. Title/Table of Contents. This Act may be cited as the "Great Lakes Protection Act of 1991."

Section 2. Findings. The ecological, recreational and economic importance of the Great Lakes is identified and the need for additional efforts to protect the Lakes is described.

Section 3. Sediment Quality Criteria and Standards. Last year's Great Lakes Critical Programs Act (PL 101-596) directed EPA to publish numerical limits for contaminants in Great Lakes sediment adequate to protect health, aquatic life and wildlife from the bioaccumulation of toxins. This bill expands that provision by ensuring that not less than 20 such sediment criteria are developed for contaminants within a year and provides authority for publication of additional criteria. It also ensures that the new criteria take into account the toxic effects which could occur when different pollutants mix with sediment.

This section also requires Great Lakes States to adopt sediment standards within two years of publication of such criteria. The EPA is to adopt enforceable standards if States fail to act within two years. This new authority assures that sediment standards will be fully integrated into State and Federal water quality programs.

Section 4. Confined Disposal Facilities. This section limits the dumping of dredged spoils in the open waters of the Great Lakes. By October, 1994, dredged spoils will have to be disposed of in confined spoil disposal facilities (CDFs) *unless* the EPA Administrator finds the materials to be clean (meeting sediment and water quality standards) and posing no ecological or physical threat to the proposed water disposal area.

This section also tightens restrictions on the siting and management of CDFs. Currently, the Corps of Engineers builds and oversees such facilities. This section gives EPA the authority to close unsafe CDFs, to concur in the siting of new ones, and to develop long-term plans for assuring the safety of all CDFs.

Subsection (d) of this section provides that a person disposing of dredge spoil material at a confined disposal facility shall have a permit from the Administrator of EPA. Permits are to assure that disposal will occur consistent with a management plan for the facility. This section does not require a permit for open lake disposal.

Section 5. Remedial Action Plans. Remedial Action Plans are now being developed for 43 contaminated sites in the Great Lakes designated by the International Joint Commission as "Areas of Concern." 26 of these sites are on the U.S. side, 12 are in Canada, and five are shared by both countries.

The RAP process is currently the main clean-up planning process in the Great Lakes Basin involving a great deal of state and local participation. To clear up confusion over what different Federal agencies are supposed to do at these sites, this section requires EPA to adopt memorandum of understanding with other Federal agencies to delineate each agency's clean-up responsibilities under a given RAP.

This section also scores these contaminated aquatic sites higher under the hazard ranking system of Superfund, thereby making them a higher priority for clean-ups under that program.

Section 6. Lakewide Management Plans. The U.S.-Canada Great Lakes Water Quality Agreement required the U.S. and Canada (along with Great Lakes States, Provinces and the public) to develop Lakewide Management Plans to identify, manage and control critical pollutants in each of the Lakes. The Great Lakes Critical Programs Act (P.L. 101-596) required EPA and the Lake Michigan States to develop and implement a Lakewide Management Plan for Lake Michigan by January 1, 1994.

To ensure that plans for other Lakes are completed in a timely manner, this section sets a final deadline of January 1, 1997 for publishing final plans for each of the other Lakes. Furthermore, this section also spells out what should be included in such plans, including an overall assessment of the envi-

ronmental quality of the lake; a description of pollutant loadings and their sources; and a comprehensive plan (including schedules and funding sources) for restoring and protecting the lake.

Section 7. Pollution Prevention. This section establishes a demonstration program to promote the use of industrial pollution prevention technologies in the Great Lakes region.

Those choosing to participate can select to install a technology from an EPA-generated list of pollution prevention technologies or they can install a different technology which reduces pollutant discharges by 75 percent from the preceding year. Eligible participants will be exempt from proposed fees for development or revision of effluent guidelines and may be granted an additional year to comply with any new effluent standards.

This section also establishes a pollutant prevention extension service in the Great Lakes.

Section 8. Fish Advisories. There are currently no uniform guidelines or standards for issuing fish advisories in the Great Lakes. This section authorizes EPA, in consultation with other Federal agencies and the States, to publish contaminated fish consumption advisories which will protect public health, including more sensitive populations (i.e. individuals who consume large quantities of fish, pregnant women, etc.) This section will not prohibit States from issuing more stringent advisories if they so desire.

Section 9. Great Lakes Policy Committee. This section establishes by statute a Great Lakes Policy Committee to provide independent and balanced advice to the EPA Administrator on Great Lakes programs and their implementation. The Committee will include representatives from the States, public interest groups, industry, local government and the general public. The Director of EPA's Great Lakes National Program Office, who currently chairs a similar committee, will serve as an ex-officio member of this new committee.

Section 10. Great Lakes Research Program. This section amends the existing Great Lakes research authority in the Clean Water Act to clarify that research plans for the Lakes are to be developed jointly by EPA and the National Oceanic and Atmospheric Administration, and in consultation with other appropriate Federal agencies currently involved in research on the Lakes.

Section 11. State Revolving Funds. This section will enable States to use their state revolving loan funds to implement Lakewide Management Plans and Remedial Action Plans. This section also requires that penalties assessed for Clean Water Act violations occurring in the Great Lakes area be deposited in the state revolving loan fund of the State where the violation occurred, and, to the extent practicable, be used to support programs benefitting the water quality of the Great Lakes.

Section 12. Authorizations. This section authorizes annual funding for the Great Lakes programs of between $46 and $56 million between fiscal year 1992 and 1998. This is a substantial increase above the existing authorization of $25 million for fiscal year 1991. This subsection also allocated not less than 20 percent for development and implementation of Remedial Action Plans and toxic pollutant demonstration projects. In addition, 10 percent of the funds are reserved for implementation of pollution prevention activities and research projects.

By Mr. KENNEDY (for himself and Mr. DODD):

S. 1499. A bill to reauthorize and revise certain provisions of the Higher Education Act of 1965, and for other purposes; to the Committee on Labor and Human Resources.

S. 1500. A bill to amend the title IX of the Higher Education Act of 1965 to enhance the quality and diversity of college and university faculty and to expand individual opportunity in graduate education; to the Committee on Labor and Human Resources.

OPPORTUNITIES FOR HIGHER EDUCATION

Mr. KENNEDY. Mr. President, education reform is an urgent priority for our Nation. The reauthorization of the Higher Education Act is an opportunity to revise and improve the current system to give more students the opportunity to achieve their full potential

Today, I am introducing two bills to help us reach these goals. The first will increase the maximum Pell grant from $3,100 to $4,500 and expand the number of eligible recipients. It will also insure that Pell grant recipients do not have their student aid reduced at the last minute.

During the past decade, the cost of a college education has risen dramatically. Most families do not have the financial resources to pay $20,000 a year, or more, to send a child to college. In the past, Pell grants have helped many lower and middle income students meet their college expenses. Now these students are increasingly being forced to rely on loans. The result is to put college education out of reach for many of the most promising students.

This legislation will renew our commitment to educational opportunity. By increasing the Pell grant, we are making a more realistic contribution to the cost of a college education. By expanding the number of eligible recipients, we are helping many hard working middle-class families meet the expenses of college.

The second bill will help qualified candidates from traditionally underrepresented groups earn doctoral degrees and enter the teaching profession at the college level. Graduate education programs, whether in the sciences or the humanities, are among the country's greatest strengths. These scholars are the guardians of our heritage and the pioneers of the Nation's future strength through their scholarship and research. They are also, at a time when we are increasingly concerned about the quality of primary and secondary education, the teachers of our children's teachers.

Yet, college and university faculties, and the graduate programs from which they draw, fall short of representing this Nation's diversity. Only 3 percent of all full time faculty members at American insitutions of higher learning are African-American, and only 2 percent are Hispanic. Less than 1 percent are American Indians. These statistics are not likely to improve in the near future. The number of African-Americans receiving doctorate degrees increased by only seven-tenths of 1 percent, or six individuals, between 1988 and 1989, and the number of Hispanics actually decreased by 4 percent.

The reauthorization of the Higher Education Act offers an opportunity to improve this situation. The legislation I am introducing will provide financial assistance to doctoral candidates from traditionally underrepresented groups, in return for a commitment to teach at a college or university once they have completed their degrees.

Some argue that such concerns about graduate study pale before the crisis in the Nation's schools, and that we should attend to their needs first. But a key part of the answer to improving elementary and secondary schools is improving access to higher education. We cannot expect students to take their full and rightful place in our educational system if there is a limit on their aspirations as learners and as scholars.

These two bills represent the most recent additions to a legislative package which also includes measures to simplify the financial aid system. This proposal simplifies the complex application forms that are a nightmare for milions of students to fill out. It also puts a cap on the inclusion of home equity in the aid process, in order to reduce the burden on homeowners trying to send their children to college.

In other legislation, I have also sought to address the excessive high school drop-out rate of minority students. As of 1989, only 55 percent of 18- to 24-year-old Hispanics completed high school. The comparable figure for African-Americans was 76 percent, and the rate for whites was 82 percent. These low rates mean lower college participation and more students who do not achieve their potential.

I recently introduced legislation to reverse this destructive trend by providing funds to schools districts and community-based organizations that operate early intervention programs to help at-risk students finish high school. In addition, the legislation gives these students an incentive to excel in high school by offering scholarships for college if they complete a rigorous core curriculum in high school.

The combination of early intervention programs and scholarships in this package of legislation will increase the likelihood that students will finish high school and go on to college. In the long run, we will all benefit from the contributions of these students to our schools, colleges, industry, and government.

I look forward to the testing of our initiatives, and to working with my colleagues to achieve the goals we share for the Nation's students and the Nation's future.

By Mr. BURNS (for himself, Mr. CONRAD, Mr. SHELBY, Mr. SIMPSON, Mr. MURKOWSKI, Mr. AKAKA, Mr. BAUCUS, Mr. DOMENICI, Mr. WALLOP, Mr. BROWN, Mr. CRAIG, and Mr. SYMMS):

S. 1501. A bill to amend the Reclamation Reform Act of 1982, and for other purposes; to the Committee on Energy and Natural Resources.

RECLAMATION REFORM ACT

Mr. BAUCUS. Mr. President, I rise today to introduce the Reclamation Reform Act Amendments of 1991. This legislation will ensure the integrity of the reclamation program, stop circumvention of the law, break the deadlock over reclamation reform and provide for the continuance of traditional and legitimate farms and farming practices in the West. The balanced approach taken by this legislation addresses concerns about abuses of reclamation law while simultaneously protecting those reclamation water users and farmers who have fulfilled the requirements of reclamation law.

During the past several years, many legislative measures have been proposed in an attempt to eliminate alleged, potential and existing violations of reclamation law. Unfortunately, these legislative proposals, while directed at perceived violations of the law, would actually have had an adverse and harmful effect on many legitimate farmers and traditional farming practices in the West.

Farmers and farm water users in my State of Montana, and throughout the West, have been and are deeply concerned about alleged abuses of the reclamation program and strongly support the elimination of any intentional violation or evasion of the law. Farm water users have expressed their support of this legislation, which is specifically targeted at stopping identified abuses as well as any efforts to potentially circumvent the law, despite the fact that these amendments will simultaneously increase reporting burdens on legitimate farm water users.

My legislation takes a carefully aimed rifle approach to stopping abuses, rather than previously proposed shotgun approaches which would have harmed many legitimate farmers and farm families. In contrast, other legislative approaches have confronted the problem in a manner as indiscriminate as using a shotgun. Hitting the target and stopping violators was insured, but only at significant cost to many farm families and reclamation farm water users, with collateral damage and harmful impact to western farm communities.

Mr. President, the legislation I am introducing today, with the support of several of my colleagues, would significantly change reclamation law by limiting the availability of reclamation program benefits according to the types of relationships, practices, and agreements between certain farm operations. Specifically, this legislation will also place additional restrictions on the receipt of reclamation program benefits by minors, nonresidents aliens, trusts and trust beneficiaries, and certain types of farming operations.

Presently, nondependent minor children are eligible to receive non-full-cost water for their separately owned or leased landholdings. A perception exists that Federal reclamation ownership and pricing limitations could potentially be avoided by economically emancipating minor children and meeting current tax law dependency definitions. To prevent this perceived avoidance, this legislation establishes that the landholdings of unmarried, minor children will be attributed to their parents for pricing purposes, irrespective of the dependency definition under tax law.

In addition, under current reclamation law, nonresident aliens who otherwise would be prohibited from receiving Federal reclamation water benefits in their individual capacity, can avoid reclamation ownership restrictions by forming U.S. businesses. Because these businesses are subject to domestic laws and taxes, they can receive reclamation benefits even if some or all of the entity is owned by foreign residents. To eliminate the potential ability to circumvent the law, this legislation will require that all such entities pay full cost for water in proportion to any nonresident alien ownership.

Under current reclamation law, in some cases, economically independent landholding that are part of a common operation are not combined when determining the availability of reclamation program benefits. Critics of reclamation programs and agriculture have raised concerns that farms that are operated in cooperation with each other in any manner may be circumventing reclamation program benefit limitations.

To address this concern, to prohibit real or potential abuse of the law, and to assure that legitimate farming operations are protected, this legislation establishes a new "operation" definition which will combine landholdings which have common decisionmakers. Common decisionmaking will be presumed to exist if, for instance, a majority interest in two or more tracts of land is owned by the same person or persons, even in the absence of common land ownership. Such a definition will require a factual inquiry to determine whether lands are, in fact, being farmed or operated in common.

The proposed "operation" definition eliminates the possibility that individuals will be able to circumvent the law by holding an economic interest in different entities, and thus avoid the combination of landholdings for pricing purposes. However, legitimate farmers and farming practices such as those customary and traditional practices or activities involving cooperatives, processors, lenders, custom farmers, farm managers, crop lenders, and quality control realtionships and arrangements are protected by this legislation.

This legislation also establishes active farmer criteria used by the Department of Agriculture to determine eligibility for farm programs to also determine eligibility to receive reclamation program benefits. Under this criteria, farm families, neighbors, and farmers who share services, labor, management, equipment, and other resources which are vital to their operations can be assured continuation of their legitimate farming practices and reclamation benefits, but only if the mandated active farmer requirements are met. In contrast, passive investors will be required to pay full cost for water.

The legislation's new operation and active farmer requirements will eliminate possible circumvention of the law and insure that reclamation benefits flow only to legitimate farmers.

Critics of the reclamation program have focused their attention on the use of trusts to circumvent reclamation program limitations. This legislation specifically addresses this criticism and stops abuse and circumvention of reclamation law in this manner. Although present reclamation law subjects only the beneficiaries of a trust to ownership and pricing limitations, my legislation will extend these reclamation limitations to the trust itself. This directly responds to accusations that trusts are a means of avoiding reclamation program restrictions and effectively counters such criticism.

This legislation also addresses concerns regarding certification procedures, reporting requirements, and the penalty system. Owners and lessees of land served with Federal reclamation water must currently report and certify that they have complied with Federal reclamation law. The reporting and certification requirements are retained with modifications to reflect the amendments to reclamation law. To mitigate the impact of excessive penalties for inadvertent or excusable reporting errors, the legislation requires that a uniform penalty system be established based on the gravity of the error. However, in cases of intentional noncompliance or fraud, more severe monetary penalties and water delivery suspensions are explicitly established.

This legislation mandates significant changes to reclamation law. Farmers in the States served by reclamation projects are well aware that this legislation will result in certain adverse impacts on legitimate farms and farming operations throughout the West. As a result, farmers must be given reason-

able opportunity to understand and comply with the new law and applicable regulations. In the past, technical, difficult regulations caused many of the compliance problems presently faced by farmers and districts. Due to the technical nature and complexity of the regulations, the Department of the Interior must be given a sufficient opportunity to issue the appropriate rules and regulations.

The effective dates and transition periods take into consideration the influences of planting cycles to insure that farmers are able to meet the new regulations without a major disruption in the middle of the year. This will also provide farmers with sufficient time to meet existing financial commitments before the full cost pricing and eligibility requirements take effect. This legislation establishes effective dates that are fair and equitable.

Mr. President, attempts to legislate reclamation reform have engendered a great deal of controversy, complex questions, and criticism of and by western water users. This legislation provides a responsible, efficient, and equitable resolution to this debate. This measure addresses these concerns, stops abuse or circumvention of reclamation law, but also ensures protection of legitimate farmers and farm families. I believe that this legislation provides the needed, balanced approach to this debate and will result in a long-term solution to the controversy that we have struggled with during the past several years.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1501

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the "Reclamation Reform Act of 1991".

SEC. 2. AMENDMENTS TO THE RECLAMATION REFORM ACT OF 1982.—The Reclamation Reform Act of 1982 (Act of October 12, 1982, 96 Stat. 1261, 1263) as amended is amended as follows:

(a) Section 202(4) is amended by adding at the end of this subsection the following sentence: "For purposes of the pricing limitation of Section 205 only, where a qualified recipient is an 'individual', such individual's landholding shall include the landholding of any unmarried child under the age of eighteen (18) years, regardless of the dependency status of the child under 26 U.S.C. 152.

(b) Section 202(6) is amended to read as follows:

"(6) The term 'landholding' means the total irrigable acreage of one or more tracts of land situated in one or more districts within the ownership or leasehold of an individual or legal entity which is served with irrigation water pursuant to a contract with the Secretary. In determining the extent of a landholding, the Secretary shall add to the landholding held directly by a qualified or limited recipient that portion of any landholding held indirectly by such qualified or limited recipient which benefits that qualified or limited recipient in proportion to that indirect landholding."

(c) Section 202 is amended by adding the following new subsections (8), (9), (10), (11) and (12) and renumbering the subsequent subsections accordingly:

"(8) The term 'nonresident alien' shall have the same meaning as set forth in Section 7701(b) of the Internal Revenue Code.

"(9) The term 'custom farmer' means an individual or legal entity who performs custom farming services, such as pesticide application, pruning, harvesting or other similar tasks, who does not bear a direct risk of loss in growing the crop.

"(10) The term 'farm manager' means an individual or entity acting directly or through employees who generally supervises farming operations on a landholding during the crop year, who does not bear a direct risk of loss in growing the crop and is not entitled to profits generated by the crop.

"(11) The term 'active farmer' means an individual, or legal entity acting through its employees or owners, which devotes at least five hundred (500) hours in a calendar year to activities benefiting some or all of the lands included within the landholding of such individual or legal entity, or who during the calendar year engages in activities with respect to such lands which are critical to the profitability of the farming enterprise conducted thereon.

"(12) The term 'operation' means:

"(a) All lands furnished with irrigation water as to which an individual or legal entity, which is not an owner or lessee, under all the facts and circumstances, makes the majority of the decisions or performs the majority of supervisory functions with respect to growing the crops on the lands that are furnished with irrigation water; or

"(b) All lands within common ownerships or common leaseholds through which any individual or legal entity owns or leases, directly or indirectly, with any other individual or entity, more than fifty percent (50%) of two (2) or more tracts of land and which are furnished with irrigation water.

"(c) The existence of any of the following shall not be considered in determining whether an operation exists:

"(1) A farm cooperative, processor, handler, packing operation, cotton gin, crop broker, seed company, water purveyor, or other similar organizations which are not entitled to profits generated by the crop which receives irrigation water.

"(2) An individual or legal entity who enters into a bona fide financial transaction with a land holder or operation involving land or crop loans, including, but not limited to, one who holds a security interest, crop mortgage, assignment of crop or crop proceeds or other interest in a crop or land solely for the purposes of obtaining repayment of a loan.

"(3) An individual or legal entity which enters into (or exercises rights under) a contract with a landholder or operation requiring quality control measures and/or the right to take control of farming operations in order to insure quality control.

"(4) Individuals or legal entities who use common equipment and/or labor.

"(5) A custom farmer or farm manager who provides custom farming or farm management services.

"(d) Full-cost pricing resulting from the application of this subsection or subsection 202(4) shall be phased in over three (3) years, that being thirty-three and one-third percent (33⅓%), sixty-six and two thirds percent (66⅔%), and one hundred percent (100%) of the difference between the applicable non-full-cost rate and the then existing full-cost rate for the first, second and third calendar years, respectively, following the effective date of these amendments."

(d) Section 203(b) is amended by inserting after the word "leased" whenever it appears the words "or operated."

(e) Section 205(a) is amended by inserting the following as subparagraph (1), and renumbering the remaining subparagraphs within section 205(a):

"(1) An operation in excess of nine hundred and sixty (960) acres of class I lands or the equivalent thereof."

(f) Section 205 is amended by adding new paragraphs (b) and (c), redesignating the existing paragraphs accordingly, and adding new section (f):

"(b) Notwithstanding the provisions of Section 205(a), lands of an operation which exceed nine hundred and sixty (960) acres of class I lands or the equivalent thereof, which are included in the landholding of an active farmer shall be eligible to receive irrigation water at less than full cost to the extent of such active farmer's otherwise unused entitlement as a qualified or limited recipient to receive irrigation water at less than full cost.

"(c) Notwithstanding the provisions of Section 205(b), an operation benefiting more than twenty-five (25) individuals shall, under no circumstances, be eligible to receive irrigation water at less than full cost on more than nine hundred and sixty (960) acres of class I lands or the equivalent thereof included within such operation."

"(f)(i) Notwithstanding any provision of this Act, a qualified or limited recipient which is a corporation, trust, estate or partnership and which has one or more nonresident aliens as a shareholder, beneficiary or partner directly or indirectly through other entities shall pay full cost for irrigation water in proportion to such shareholders, beneficiaries' or partners' beneficial interest in the assets of the recipient.

"(ii) The provisions of subsection (f)(i) above shall not apply for a four (4) year period after the effective date of these amendments to the benefical interest of a nonresident alien who held such interest on the date of enactment of this subsection or who received the same by gift or devise from such nonresident alien.

"(iii) To the extent the time period set forth in subsection (f)(ii) is not applicable, the provision of subsection (f)(i) shall not apply for a period of one (1) year to a nonresident alien who obtained such interest by involuntary foreclosure, or similar involuntary process of law, by bona fide conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), by inheritance, or by devise."

(g) Section 206 is amended in its entirety by the following provisions:

"(a) As a condition to the receipt of irrigation water for lands in a district which has a contract as specified in Section 203, each landowner, lessee and operation within such district whose total landholding westwide exceeds three hundred and twenty (320) acres shall furnish the district, in a form prescribed by the Secretary, a certificate that they are in compliance with the provisions of this Act, including a statement of the number of acres leased, the term of any lease and a certification that the rent paid reflects the

reasonable value of the irrigation water to the productivity of the land. The Secretary may require any lessee to submit to him, for his examination, a complete copy of any such lease executed by each of the parties thereto.

"(b) The Secretary shall have the authority with respect to noncompliance in connection with reporting and certification forms to impose penalties not to exceed Five Hundred Dollars ($500.00) per year against the person or legal entity who is in violation for incidents of noncompliance based on errors, good faith questions of interpretation and unintentional omissions. In those cases where the Secretary determines that violations resulted from fraud or intentional noncompliance, the Secretary, in addition to other remedies available under law, is authorized to terminate water deliveries until compliance is achieved and impose a fine of up to Ten Thousand Dollars ($10,000.00) per year against the person or legal entity who is in violation. In each case, the Secretary shall collect the fines and penalties from the person or entity who is in violation.

"(c) The Secretary is directed to review all compliance violations identified prior to the effective date of these amendments. In the case of incidents of noncompliance based on errors, late submission of forms, good faith questions of interpretation, and unintentional omissions, in lieu of an assessment of full-cost, whether or not previously collected from the landholder or district, the Secretary shall impose penalties of up to Five Hundred Dollars ($500.00) per year against the person or legal entity who was in violation. Any amounts collected in excess thereof shall be refunded or credited to future payments of the district. The Secretary shall collect the fines and penalties from the person or legal entity who was in violation."

(h) Section 214(a) is struck in its entirety and the following language is inserted in place thereof and existing subsection (b) is redesignated as (e):

"(a) The ownership and pricing limitations of this Act and the ownership limitations in any other provision of Federal reclamation law shall not apply to an individual or corporate trustee acting in a fiduciary capacity for a beneficiary or beneficiaries.

"(b) The ownership and pricing limitations of this Act and the ownership limitations of any other provision of Federal reclamation law shall apply to a beneficiary of a trust in the same manner as any other individual.

"(c) The ownership and pricing limitations of this Act and the ownership limitations in any other provisions of Federal reclamation law shall not apply to lands which are held by an individual or corporate trustee in a fiduciary capacity for a beneficiary or beneficiaries whose interests in the land served do not exceed the ownership and pricing limitations imposed by Federal reclamation law, including this title, provided the trust in which such lands are held was established on or before April 15, 1991. To the extent lands held in any such trust exceed nine hundred and sixty (960) acres of class I lands or the equivalent thereof, all lands held by such trust shall be deemed to be a single operation.

"(d) Trusts established subsequent to April 15, 1991 shall be deemed to be legal entities for purposes of Sections 202(6), 202(7) and 202(9)."

(i) Section 219 is amended by inserting at the beginning "(a)" and inserting the following new subsections:

"(b) The term 'operation' shall not apply to any landholding of a religious or charitable entity or organization, as defined by Federal law, which qualifies as an individual under this section. If an individual religious or charitable entity or organization holds land as a lessor within a district, it shall qualify as an individual with respect to such lands; provided that the entity or organization directly uses the proceeds of the lease only for charitable purposes; provided further that the lessee is eligible to receive reclamation water upon the leased lands.

"(c) If an individual religious or charitable organization holds lands within a district, but fails to qualify as an individual under this section, its lands within a district with regard to which it does not qualify as an individual shall be lands held in excess of the ownership limitations of Section 209 of this Act, and shall receive reclamation water only as excess lands in compliance with the provisions of Section 209 of this Act. The failure of an individual religious or charitable entity or organization to qualify as an individual under this section shall not affect the qualification as an individual under this section of another individual religious or charitable entity or organization which is affiliated with the same central organization or is subject to a hierarchical authority of the same faith."

(j) Section 224(e) is amended by adding the following:

". . . unless the party involuntarily acquiring such land previously sold such land subject to a covenant as provided in Section 209(f)(2), in which case said covenant shall continue in full effect for the balance of its original ten (10) year term."

(k) Section 224(i) is struck in its entirety and the following language is inserted in place thereof:

"(i) When the Secretary finds that any individual or legal entity subject to Reclamation law, including this Act, has not paid the required amount for irrigation water delivered to a landholding pursuant to Federal Reclamation law, including this Act, he shall collect from the individual or entity the amount of underpayment, which sum, together with the contract rate applicable to such landholder shall not exceed Sixty-Five Dollars ($65.00) per acre-foot, with interest accruing from the date the required payment was due until paid. The Secretary has authority to adjust this amount up to three percent (3%) per year based on project operation and maintenance costs. The interest rate applicable to underpayment shall be equal to the rate applicable to expenditures as provided in Section 203(3)(c).

"(j) Notwithstanding any other provison of law, any determination of noncompliance by the Secretary under this section or Section 206 shall be in accordance with Chapter 5 of Title 5 of the United States Code (relating to administrative procedure), subject to an adjudicatory hearing. No penalty shall be imposed by the Secretary on a landholder or operation for failure to comply with any provisions of this Act and the regulations established pursuant to this Act after one (1) year from the date of noncompliance unless such noncompliance was the result of fraud or intentional misrepresentation of fact by the landholder or operation. Upon a final determination being made, the Secretary may direct that irrigation water service to such individual or entity be terminated until the underpayment is paid in full.

"(k) Except to the extent that the right to receive or pay for irrigation water is modified after the effective date of this Act, the parties to any trust or agreement that has received or receives the approval of the Secretary pursuant to Federal reclamation law shall not be liable for any penalty or increased cost of irrigation water during the period for which such trust or agreement was approved or after said agreement is approved, unless such Secretarial approval was obtained as a result of fraud or intentional misrepresentation of fact by the party requesting that approval.

"(l) The Secretary shall promulgate rules and regulations which provide for reasonable time periods for Secretarial consideration of sales price approval applications, trust agreements, elections, and other arrangements submitted for approval. Such applications or agreements shall be deemed approved if Secretarial consideration is not completed within said time periods. All disapprovals shall be provided in writing to the landholder and the landholder's district and shall be based on good cause and not merely for insufficient time for such Secretarial consideration."

(l) Insert new Section 229 to provide as follows and renumber subsequent sections accordingly:

"SEC. 229. The Secretary and Secretary of Agriculture shall negotiate and execute a memorandum of understanding or other appropriate instrument to permit the Secretary access to and the use of information collected or maintained by the Department of Agriculture which would aid enforcement of the ownership and pricing limitations of Federal reclamation law, including this Act."

(m) Section 230 is amended by striking the number "230" and substituting therefore the number "231."

SEC. 3. EFFECTIVE DATE.—Within six (6) months of the enactment of this Act, the Secretary shall promulgate and publish in the Federal Register final regulations implementing the amendments made by this Act. The provisions of this Act shall become effective the next January 1st following publication of such final regulations, if at least ninety days have elapsed since such regulations became final. If ninety days has not elapsed then the provisions of this Act shall become effective the second January 1st following the publication of the final regulations.

Mr. WALLOP. Mr. President, it is with some reluctance that I join with my colleagues in introducing this legislation to amend the Reclamation Reform Act. I understand why this legislation is being introduced and I want to specifically commend Senator BURNS, the ranking member on the Subcommittee on Water and Power for his leadership and his willingness to tackle a thankless task. I also want to commend Senator CONRAD, the vice chairman of the subcommittee for his efforts and his involvement both last Congress and in this session. It was his questioning during the hearings last Congress, as much as anything else, which brought home to many in the Senate just how dangerous the legislation was last year and the immediate threat which it posed to traditional farming practices in the West and the direct assault which it made on the family farmer.

I speak from some experience on this issue since I was the floor manager of the original Reclamation Reform Act in 1982. I remember the debates and I

remember quite clearly how both the Senate and the House agreed that we were not going to try to limit farms or farming operations. We understood the pitfalls which lay down that route and quite deliberately decided not to proceed. What we did agree on, however, was an economic benefit test which would distinguish legitimate operations from disguised leases. The test was guite simple and I see no reason why an aggressive application of that test would not have dealt with any real abuses.

Unfortunately, there are those who simply believe that farming itself is an abuse and who would prefer to end irrigated agriculture. They either fail to understand the social fabric of the West and the way generations of neighbors work together or they find such patterns distasteful. It was clear from the testimony last year that there were groups fully prepared to charge full cost if neighbors shared equipment or parents helped their children. The assault comes from those whose hands never touched the soil and whose only contact with agriculture comes at the supermarket.

I do not believe that amendments are warranted or needed. The 1987 amendments should have satisfied any lingering concerns. Aggressive enforcement by the Department should have dealt with any real abuses or attempts to evade the acreage limitations. Unfortunately, the problem is not abuses of the law but abuses of the process. Those who did not achieve their social agenda of ending family farming have adopted a scorched earth policy of holding Federal reclamation projects hostage. The hostage taking, even of projects such as Buffalo Bill which would have significant environmental benefits, is the reason for this legislation, not any widespread evasion or abuse of reclamation law.

There is not a lot I can add to the discussions which took place last year. I remain unconvinced that we need to do any legislation at all except that the Department in my view has not been as aggressive as it should have been in enforcing existing law. Given the hostage taking which is going on, we will probably be forced to enact something. My colleagues should not assume, however, that whatever we enact will in any way stop the assault on the West from those Eastern interests who simply want to end irrigated agriculture west of the 100th meridian. According to the February 1990 report "Federal Water Project Costs" prepared by Truman Price & Alex Radin, Wyoming repays 84 percent of all Federal expenditures on water projects. That is not just the Bureau of Reclamation, but all water project costs. Keep that in mind when you consider that New Jersey and New York repay nothing. Zero.

It's wonderful to listen to those who soak the taxpayers to drain lands for agriculture under the guise of flood control complain about acreage limitations in the West. It is almost funny to watch them formulate legislation to prevent neighbors from helping neighbors, to stop fathers from helping children, and to block children from helping each other while they dredge and fill at the public expense for the benefit of their local commercial interests with no thought of repayment. Remember that cost sharing is not the same thing as repaying the Federal share. If you look at the legislation which was being pushed last year, think long and hard over phrases such as "the mere sharing of equipment or labor among neighbors or family members shall not by itself create an inference that a joint farming operation * * * exists." Doesn't that make you comfortable? What business is it of the Federal Government if neighbors share equipment so long as they keep their economic interests separate?

I commend those who worked so long and hard on this legislation in an effort to find some formula which would break the logjam on projects. I suggest, however, that we will need to be very careful over any attempt to regulate operations rather than acreage. If we get into the trap of defining the reclamation program in terms of operations, the first victim will be the family farmers and those who actually work the land. The lawyers and dentists in New York and San Francisco will be able to buy land and hire managers, but poor old dad will be out of luck if he tries to keep Johnny's farm going while Johnny is off in the gulf defending the country. Johnny will come marching home with his purple heart to find a bill for full cost because his father or brother or neighbor ran his farm while he was off serving his country.

I am also concerned with attempts to retroactively eliminate trusts. As a result of the 1987 amendments, we required that trusts be irrevocable. The Secretary has approved a variety of trusts and the land has been divested. What is being proposed is a new and pernicious form of "Gotcha." Now that the land is beyond recall, we will sock the trusts with full cost and still attribute the land held for a minor child back to the parents. Now that we have them locked in, we will force the land to be sold to nonfamily members. Isn't it a wonderful concept that a parent can put land in an irrevocable trust for strangers but not for his own children?

I remember of hearing in 1987 when Congressman MILLER testified that the legislation which he had sponsored on amendments to the Reclamation Reform Act was not intended to affect family farming arrangements. He stated emphatically and clearly that.

If I might just for a second, let me make it clear that Congressman Coelho's bill and my bill would allow for farm management arrangements so that families that have alienated their land to the children bring that back together could farm that as one operation, recognizing that the economic entities are in fact separable and that they are irrevocable. It allows for that, because of what the law says. It talks about ownership. The law only talks about ownership. The whole purpose was to get away from leases.

That was then, this is now. Time passes and a new assault commences.

I support this legislation because it fairly and clearly addresses the concerns which have been raised. I think that several provisions, especially those which will ease some of the reporting burdens on small farms, are improvements. The effort to adjust penalties is also a useful provision. The concept if actively engaged is an innovative approach and may help mitigate the impact of the changes. Although this legislation will have minimal impact on Wyoming, except for the relief granted small farms, I do not want to take a strictly parochial approach. I am concerned about the impact of any changes on farmers in Idaho, Montana, the Dakotas, Nebraska, Kansas, Arizona, and elsewhere. Both Senator BURNS and Senator CONRAD should be commended for their leadership and the knowledge which they bring to this issue. I think this is a valiant effort and I am pleased to cosponsor the measure. Assuming that any amendments to reclamation reform will have to be enacted to end the hostage taking, I think that this legislation is both responsible and realistic.

ADDITIONAL COSPONSORS

S. 141

At the request of Mr. DASCHLE, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Hawaii [Mr. INOUYE], the Senator from Maryland [Ms. MIKULSKI], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors 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. 200

At the request of Mr. PRYOR, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 200, a bill to amend the Internal Revenue Code of 1986 to exclude small transactions from broker reporting requirements, and to make certain clarifications relating to such requirements.

S. 311

At the request of Mr. ROTH, the name of the Senator from Idaho [Mr. SYMMS] 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. 668

At the request of Mr. MCCAIN, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 668, a bill to authorize consolidated grants to Indian tribes to regulate environmental quality on Indian reservations.

S. 722

At the request of Mr. ROTH, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of S. 722, a bill to amend the Internal Revenue Code of 1986 with respect to the requirement that an S corporation have only 1 class of stock.

S. 736

At the request of Mr. GRAHAM, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 736, a bill to amend the Outer Continental Shelf Lands Act.

S. 810

At the request of Mr. HARKIN, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 810, a bill to improve counseling services for elementary school children.

S. 879

At the request of Mr. DASCHLE, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 879, a bill to amend the Internal Revenue Code of 1986 to clarify the treatment of certain amounts received by a cooperative telephone company indirectly from its members.

S. 971

At the request of Mr. DECONCINI, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 971, a bill to promote the development of microenterprises in developing countries.

S. 1125

At the request of Mr. BRYAN, his name was added as a cosponsor of S. 1125, a bill to provide incentives to health care providers serving rural areas, to provide grants to county health departments providing preventative health services within rural areas, to establish State health service corps demonstration projects, and for other purposes.

S. 1156

At the request of Mr. PACKWOOD, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of S. 1156, a bill to provide for the protection and management of certain areas on public domain lands managed by the Bureau of Land Management and lands withdrawn from the public domain managed by the Forest Service in the States of California, Oregon, and Washington; to ensure proper conservation of the natural resources of such lands, including enhancement of habitat; to provide assistance to communities and individuals affected by management decisions on such lands; to facilitate the implementation of land management plans for such public domain lands and Federal lands elsewhere; and for other purposes.

S. 1157

At the request of Mr. DASCHLE, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Hawaii [Mr. INOUYE], and the Senator from Nevada [Mr. REID] were added as cosponsors 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. 1200

At the request of Mr. BURNS, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 1200, a bill to advance the national interest by promoting and encouraging the more rapid development and deployment of a nationwide, advanced, interactive, interoperable, broadband communications infrastructure on or before 2015 and by ensuring the greater availabililty of, access to, investment in, and use of emerging communications technologies, and for other purposes.

S. 1231

At the request of Mr. BENTSEN, the names of the Senator from Florida [Mr. GRAHAM] and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of S. 1231, a bill to amend title XVIII of the Social Security Act to provide for coverage of colerectal screening examinations and certain immunizations under part B of the Medicare Program, and for other purposes.

S. 1245

At the request of Mr. DASCHLE, the name of the Senator from Hawaii [Mr. INOUYE] 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. 1261

At the request of Mr. DOLE, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of S. 1261, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury excise tax.

S. 1300

At the request of Mr. ROTH, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1300, a bill to minimize the adverse effects on local communities caused by the closure of military installations.

S. 1398

At the request of Mr. REID, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Idaho [Mr. SYMMS], the Senator from Idaho [Mr. CRAIG], and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of S. 1398, a bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from certain rules for determining contributions in aid of construction.

SENATE JOINT RESOLUTION 18

At the request of Mr. ROTH, his name was added as a cosponsor of Senate Joint Resolution 18, a joint resolution proposing an amendment to the Constitution relating to a Federal balanced budget.

SENATE JOINT RESOLUTION 164

At the request of Mr. GORE, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Vermont [Mr. JEFFORDS], the Senator from North Dakota [Mr. CONRAD], and the Senator from Virginia [Mr. WARNER] 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 173

At the request of Mr. DOLE, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of Senate Joint Resolution 173, a joint resolution designating 1991 as the 25th anniversary year of the formation of the President's Committee on Mental Retardation.

SENATE JOINT RESOLUTION 174

At the request of Mr. GRAHAM, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of Senate Joint Resolution 174, a joint resolution designating the month of May 1992, as "National Amyotrophic Lateral Sclerosis Awareness Month."

AMENDMENT NO. 734

At the request of Mr. HELMS, the names of the Senator from New Hampshire [Mr. SMITH] and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of amendment No. 734 proposed to H.R. 2622, a bill making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1992, and for other purposes.

SENATE RESOLUTION 155—DESIGNATING THE WEEK OF AUGUST 18, 1991 THROUGH AUGUST 24, 1991, AS NATIONAL SADDLEBRED HORSE WEEK

Mr. FORD (for himself, Mr. MCCONNELL, Mr. SASSER, and Mr. GORE) submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 155

Whereas in 1991, the American Saddlebred Horse Association, the oldest registry in the United States for an American breed of horse, is celebrating its 100th anniversary, having been founded in Louisville, Kentucky, in 1891;

Whereas the American Saddlebred Horse Association, presently located in the Kentucky Horse Park in Lexington, Kentucky, represents the American Saddlebred Horse, a breed of horse with a development that parallels the historic origins of the United States;

Whereas the American Saddlebred Horse, bred by English colonists as comfortable riding horses and referred to as "Kentucky Saddlers", were the preferred cavalry mounts during the Civil War;

Whereas today there are more than 75,000 living pedigree American Saddlebred horses on record at the American Saddlebred Horse Association;

Whereas the breed is heralded internationally as the ultimate show horse, demonstrating animation, brilliance, and grace at 3 and 5 gaits, as well as excelling as a pleasure and driving horse;

Whereas there are more than 7,000 active members of the American Saddlebred Horse Association and 56 affiliated American Saddlebred Horse Association Charter Clubs that exhibit the breed at an estimated 1,000 annual horse shows, fairs, and special events throughout the United States, Canada, Australia, and Europe; and

Whereas the American Saddlebred Horse Association will be holding a "Centennial Celebration" for thousands of members and spectators during the week of the Kentucky State Fair World Championship Horse Show, the Saddlebred sport's premier event: Now, therefore, be it

Resolved, That in recognition of the centennial year of the American Saddlebred Horse Association and of the role played by this distinguished breed in the history and growth of our great Nation, the week of August 18, 1991, through August 24, 1991, is designated as "National American Saddlebred Horse Week."

Mr. FORD. Mr. President, it gives me great pleasure, along with my colleagues Senators MCCONNELL, GORE, and SASSER, to introduce a resolution designating the week beginning August 18, 1991, as "National American Saddlebred Horse Week"—honoring the 100th anniversary of the National American Saddlebred Horse Association.

Founded in 1891 in Louisville KY, the American Saddlebred Horse Association is the oldest registry in the United States for an American bred horse. However, the history of the horse itself dates back to the 17th century as North America was colonized by British colonists. These all-purpose horses played a major role in the settlement of early America. The development of the breed parallels the historic development of America, evolving to present standards by the time of the Civil War.

In fact, the American saddle horse gained fame as a breed during the Civil War. Saddlebreds served as the mounts of many famous generals; Lee, Grant, Sherman, and Stonewall Jackson.

Due to their heightened popularity and commercial value, breeders conceived the idea of the formation of a breed association and registry. The first breed association of its kind in the United States, the American Saddlebred Horse Association formulated pedigrees and rules for the registry in 1891.

Today, 100 years later, we can reflect on the breed's rich and proud history. The saddlebred is truely a unique, remarkable horse. It is commonly considered the most impressive of all breeds, and many regard it as the most beautiful horse existing in the world today. Above all, they are highly intelligent, people oriented horses with endearing personalities, making them one of the most popular horses in America today.

Mr. President, as we honor the centennial anniversary of the American Saddlebred Horse Association, I would like to recognize the Kentucky members of the association who have worked tirelessly to prepare Kentucky and the Nation for the centennial anniversary. With their enthusiasm and dedication, many have been enlightened by the evolution of the American saddlebred horse, truely "The Horse America Made."

AMENDMENTS SUBMITTED

TREASURY, POSTAL SERVICE, EXECUTIVE OFFICE OF THE PRESIDENT, AND INDEPENDENT AGENCIES APPROPRIATION ACT, FISCAL YEAR 1992

HELMS (AND THURMOND) AMENDMENT NO. 780

Mr. HELMS (for himself and Mr. THURMOND) proposed an amendment to the bill (H.R. 2622) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1992, and for other purposes, as follows:

At the appropriate place, add the following new section:

SEC. . (1) Pursuant to its authority under section 994 of title 28, United States Code, the Sentencing Commission shall promulgate guidelines, or amend existing or proposed guidelines as follows:

(a) guideline 2G2.2 to provide a base offense level of not less than 15 and to provide at least a 5 level increase for offenders who have engaged in a pattern of activity involving the sexual abuse of exploitation of a minor.

(b) guideline 2G2.4 to provide that such guideline shall apply only to offense conduct that involves the simple possession of materials proscribed by chapter 110 of title 18, United States Code and guideline 2G2.2 to provide that such guideline shall apply to offense conduct that involves receipt or trafficking (including, but not limited to transportation, distribution, or shipping);

(c) guideline 2G2.4 to provide a base offense level of not less than 13, and to provide at least a 2 level increase for possessing 10 or more books, magazine, periodicals, films, video tapes or other items containing a visual depiction involving the sexual exploitation of a minor;

(d) section 2G3.1 to provide a base offense level of not less than 10;

(2)(a) Notwithstanding any other provision of law, the Sentencing Commission shall promulgate the amendments mandated in subsection (1) by November 1, 1991, or within 30 days enactment, whichever is later. The amendments to the guidelines promulgated under subsection (1) shall take effect November 1, 1991, or 30 days after enactment, and shall supercede any amendment to the contrary contained in the amendments to the sentencing guidelines submitted to the Congress by the Sentencing Commission on or about May 1, 1991.

(b) The provisions of section 944(x) of title 28, United States Code, shall not apply to the promulgation or amendment of guidelines under this section.

DOLE (AND OTHERS) AMENDMENT NO. 781

Mr. DOLE (for himself, Mr. MITCHELL, Mr. HELMS, Mr. KENNEDY, and Mr. HATCH) proposed an amendment to the bill H.R. 2622, supra, as follows:

At the appropriate place, insert the following new section:

SEC. . (a) Notwithstanding any other provision of law, a State shall, not later than 1 year after the date of enactment of this Act, certify to the Secretary that such State has in effect regulations, or has enacted legislation, to adopt the guidelines issued by the Centers for Disease Control concerning recommendations for preventing the transmission, by health care professionals, of the human immunodeficiency virus and the hepatitis B virus to patients during exposure prone invasive procedures. Such regulations or legislation shall apply to health professionals practicing within the State and shall be consistent with Centers for Disease Control guidelines and Federal law. Failure to comply with such guidelines, except in emergency situations when the patient's life is in danger, by a health care professional shall be considered as the basis for disciplinary action by the appropriate State licensing agent.

(b) Except as provided in subsection (c), if a State does not provide the certification required under subsection (a) within the 1-year period described in such subsection, such State shall be ineligible to receive assistance under the Public Health Service Act (42 U.S.C. 301 et seq.) until such certification is provided.

(c) The Secretary of Health and Human Services shall extend the time period described in subsection (a) for a State, if—

(1) the State has determined not to promulgate regulations to adopt the guidelines referred to in subsection (a); and

(2) the State legislature of such State meets on a biennial basis and has not met within the 1-year period beginning on the date of enactment of this Act.

DECONCINI AMENDMENT NO. 782

Mr. DECONCINI proposed an amendment to amendment No. 734 proposed by Mr. HELMS to the bill H.R. 2622, supra, as follows:

Strike the first seven lines of amendment no. 734; insert at the beginning of the amendment, ": *Provided, That*"; and strike the period at the lend of the amendment and insert in lieu thereof, as semicolon.

DECONCINI AMENDMENT NO. 783

Mr. DECONCINI proposed an amendment to amendment No. 742 proposed

by him to the bill H.R. 2622, supra, as follows:

Strike "$288,000,000" and insert in lieu thereof "$301,000,000".

DEPARTMENTS OF VETERANS AFFAIRS, HOUSING AND URBAN DEVELOPMENT, AND SUNDRY INDEPENDENT AGENCIES, COMMISSIONS, CORPORATIONS, AND OFFICES APPROPRIATION ACT, FISCAL YEAR 1992

SMITH AMENDMENT NO. 784

Mr. SMITH proposed an amendment to the bill (H.R. 2519) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes, as follows:

Beginning after the word "notwithstanding" on page 31, line 11, strike all through line 18 and insert in lieu thereof the following: "any other provision of this act to the contrary, $72,800,000 of the funds appropriated pursuant to this paragraph shall be expended for medical care by the Veterans Health Administration.".

MIKULSKI AMENDMENT NO. 785

Ms. MIKULSKI proposed an amendment to the bill H.R. 2519, supra, as follows:

Beginning on page 104, line 17, strike all after "Sec. 520." through line 2 on page 105, and insert in lieu thereof the following:

"Notwithstanding any other provision of law.—

"(a) prices for drugs and biologicals paid by the Department of Veterans Affairs, and prices for drugs and biologicals on contracts administered by the Department of Veterans Affairs, shall not be used to calculate Medicaid rebates paid by drug and biological manufacturers; and

"(b) the Secretary of Veterans Affairs shall shall attempt to negotiate new contracts, or renegotiate current contracts, for drugs and biologicals, including those contracts for drugs and biologicals utilized or administered by the Department of Veterans Affairs which are listed in Federal Supply Classification (FSC) Group 65 of the Federal Supply Schedule, with the view toward achieving a price comparable to, or lower than, the price charged the Department of Veterans Affairs by the manufacturer on September 1, 1990, increased by the fiscal year 1991 medical consumer price index, as determined by the Secretary; and

"(c) the Secretary shall provide a report by June 30, 1992, to the House and Senate Veterans' Affairs Committees, the House and Senate Appropriations Committees, the House Energy and Commerce Committee, and the Senate Finance Committee, on the percentage of price increase to the Department from September 1, 1990, to a date 60 days prior to the date of the report, for each drug and biological listed in FSC Group 65.".

McCAIN AMENDMENT NO. 786

Ms. MIKULSKI (for Mr. McCAIN) proposed an amendment to the bill H.R. 2519, supra, as follows:

Page 68, line 22, before the last semicolon, insert: "and from which funds up to one-half of one percent may be made available by the Administrator for direct grants to Indian tribes for construction of wastewater treatment facilities.".

DECONCINI AMENDMENT NO. 787

Ms. MIKULSKI (for Mr. DECONCINI) proposed an amendment to the bill H.R. 2519, supra, as follows:

SEC. . GENERAL ACCOUNTING OFFICE STUDY OF FHA MUTUAL MORTGAGE INSURANCE FUND.

The General Accounting Office (GAO) shall prepare and submit to Congress no later than April 1, 1992, a study of the actuarial soundness of the Federal Housing Administration's single family mortgage insurance program and the solvency of the Mutual Mortgage Insurance Fund (MMIF). The study using the latest reliable data available shall consider the extent to which the following factors were analyzed by the 1990 Price Waterhouse study of the MMIF, how the analysis of these factors might be improved, and how any appropriate modifications to the study's analysis of these factors or other factors identified by GAO would affect Price Waterhouse's conclusions regarding the actuarial soundness and the net worth of the MMIF and the ability of the MMIF to meet the capital ratio targets established in the Omnibus Budget Reconciliation Act of 1990. These factors include:

The actuarial performance of loans insured by the FHA during the years considered by Price Waterhouse, including the 1986 and 1987 books of business. Specifically, the overall default rates and claims (loss) experience of the loans considered and what the experience implies regarding the actuarial soundness of the MMIF.

The effect of the Mortgagor Equity rule issued by HUD, which limits the amount of closing costs that can be financed with a FHA mortgage to 57 percent of the total amount of allowable closing costs, on the actuarial status of the MMIF, default rates of FHA borrowers, the relative impact on purchasers of homes at various price levels, and the ability of potential FHA borrowers to purchase homes.

The effect of underwriting changes made by the Federal Housing Administration since 1986.

The effect of increasing the maximum mortgage amount that can be insured under the FHA single family mortgage insurance program.

The impact on the propensity of borrowers with mortgages currently insured by the FHA to refinance their existing mortgages with FHA insurance, given the annual premium requirements established by the Omnibus Budget Reconciliation Act of 1990, and the consequences for the actuarial soundness of the MMIF of a policy to allow "streamlined refinancings" whereby the borrower would not be required to pay an annual premium.

FHA's accounting method for deferring and amortizing the MMIF single-family one-time premium revenue.

The valuation of delinquent loans for loss reserve accounting purposes. Assumptions regarding the rate of home price appreciation.

DECONCINI AMENDMENT NO. 788

Ms. MIKULSKI (for Mr. DECONCINI) proposed an amendment to the bill H.R. 2519, supra, as follows:

At the appropriate place in the bill, insert the following new undesignated paragraph:

For purposes of the United States Housing Act of 1937, members of the Pascua Yaqui tribe who reside in Guadalupe, Arizona, shall be considered (without fiscal year limitation) as residing on an Indian reservation or other Indian area.

MOYNIHAN AMENDMENT NO. 789

Ms. MIKULSKI (for Mr. MOYNIHAN) proposed an amendment to the bill H.R. 2519, supra, as follows:

On page 64, line 24, immediately after the colon, insert the following: "*Provided further*, That not less than $2,900,000 shall be made available, by transfer to the Council on Environmental Quality Management Fund, for use by the Office of the Director of the National Acid Precipitation Assessment Program, in implementing the requirements of section 103(j) of the Clean Air Act, and of such amount transferred, not less than $1,400,000 shall be available only for implementing section 103(j)(3)(B) of the Clean Air Act.".

CRANSTON (AND RIEGLE) AMENDMENT NO. 790

Ms. MIKULSKI (for Mr. CRANSTON, for himself and Mr. RIEGLE) proposed an amendment to the bill H.R. 2519, supra, as follows:

Insert at the appropriate place in the bill:

Section 328(a) of the Cranston-Gonzalez National Affordable Housing Act is amended by inserting before the period in the first sentence the following, "or other individuals and entities expressly approved by HUD." This amendment shall be effective only for fiscal year 1992.

MURKOWSKI (AND STEVENS) AMENDMENT NO. 791

Ms. MIKULSKI (for herself, Mr. MURKOWSKI, and Mr. STEVENS) proposed an amendment to the bill H.R. 2519, supra, as follows:

At the appropriate place add the following new section:

SEC. . ESTABLISHMENT OF REGIONAL OFFICE.

The Administrator of the Environmental Protection Agency shall establish within the Environmental Protection Agency an eleventh region, which will be comprised solely of the State of Alaska, and a regional office located therein.

CRANSTON AMENDMENT NO. 792

Ms. MIKULSKI (for Mr. CRANSTON) proposed an amendment to the bill H.R. 2519, supra, as follows:

Insert at the appropriate place the following new subsections:

SEC. . EXTENSION OF AUTHORITY.

Section 535(b) of the Housing Act of 1949 (42 U.S.C. 1490o(b)) is amended by striking "18-month period" and inserting "30-month period".

SEC. . RETROACTIVITY.

If any administrative approval of any housing subdivision is made after the expiration of the 18-month period beginning on the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989 and before the date of the enactment of this Act and otherwise is made in accord-

ance with the provisions of section 535(b) of the Housing Act of 1949, the approval is hereby approved and shall be considered to have been lawfully made.

MIKULSKI AMENDMENT NO. 793

Ms. MIKULSKI proposed an amendment to the bill H.R. 2519, supra, as follows:

On page 65, line 18, before the end of the sentence insert the following new proviso: "*Provided further*, That of the amount provided under this heading, up to $1,000,000 shall be available for the Chemical Safety and Hazard Investigation Board, as authorized by the Clean Air Act Amendments of 1990".

WIRTH (AND OTHERS) AMENDMENT NO. 794

Mr. WIRTH (for himself, Mr. KERREY, Mr. METZENBAUM, Mr. CONRAD, Mr. WELLSTONE, Mr. ROCKEFELLER, Mr. SIMON, Mr. BRYAN, Mr. DASCHLE, and Mr. WOFFORD) proposed an amendment to the bill H.R. 2519, supra, as follows:

On page 103, between lines 21 and 22, insert the following:

(c) AVAILABILITY OF EXAMINATION REPORTS.—

(1) PUBLIC AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public reports of all examinations of each insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act, resolved by the Federal Savings and Loan Insurance Corporation between January 1, 1988, and the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or of a holding company of such institution, performed during the 5-year period preceding the failure of the institution.

(2) 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, the Federal Savings and Loan Insurance Corporation, or the Federal Deposit Insurance Corporation and any other party, where such agreement or claim relates to an institution described in paragraph (1) shall be published and made available to the public.

(3) APPLICABILITY.—The requirements of paragraph (1) shall apply 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.

KERREY AMENDMENT NO. 795

Mr. KERREY proposed an amendment to amendment No. 794 proposed by Mr. WIRTH to the bill H.R. 2519, supra, as follows:

Beginning with page 1, line 5, strike through the end of the amendment and insert the following:

(A) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public reports of all examinations of each insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act, resolved by the Federal Savings and Loan Insurance Corporation between January 1, 1988, and the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or of a holding company of such institution, reformed during the 5-year period preceding the failure of the institution.

(2) 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, the Federal Savings and Loan Insurance Corporation, or the Federal Deposit Insurance Corporation and any other party, where such agreement or claim relates to an institution described in paragraph (1) shall be published and made available to the public.

(3) APPLICABILITY.—The requirements of paragraph (1) shall apply 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.

(d) PUBLIC DISCLOSURE CONCERNING CERTAIN FSLIC TRANSACTIONS.—The Board of Directors of the Resolution Trust Corporation shall make available to the public not later than October 1, 1991, the draft version of a report prepared for the Oversight Board of the Resolution Trust Corporation and the Congress in accordance with section 21A(b)(11)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(11)(B)) that identifies by name all bidders and their employers, as well as all Federal employees and officials, involved in the Federal Savings and Loan Insurance Corporation's Southwest Plan transactions and Oklahoma Plan transactions.

DOLE AMENDMENT NO. 796

Ms. MIKULSKI (for Mr. DOLE) proposed amendment to the bill H.R. 2519, supra, as follows:

On page 31, line 18, insert before the period: "including $500,000 for the city of Kansas City, Kansas to operate a social service center".

On page 77, line 4, insert before the period: ", notwithstanding section 201 of P.L. 100-707, including $1,155,000 to install new sirens in Kansas with a twenty-five percent local match in towns under 5,000 and a fifty percent local match in towns over 5,000.".

DECONCINI AMENDMENT NO. 797

Ms. MIKULSKI (for Mr. DECONCINI) proposed an amendment to the bill H.R. 2519, supra, as follows:

SEC. . GENERAL ACCOUNTING OFFICE STUDY OF THE FEDERAL HOUSING ADMINISTRATION'S MUTUAL MORTGAGE INSURANCE FUND.

The General Accounting Office shall prepare and submit to Congress no later than April 1, 1992, a study of the actuarial soundness of the Federal Housing Administration's single family mortgage insurance program and the solvency of the Mutual Mortgage Insurance Fund. The study, using existing studies (including the study entitled "An Actuarial Review of the Federal Housing Administration's Mutual Mortgage Insurance Fund") and employing the latest reliable data available, shall analyze the actuarial soundness of the Mutual Mortgage Insurance Fund and the ability of the Mutual Mortgage Insurance Fund to meet the capital ratio targets established in the Omnibus Budget Reconciliation Act of 1990 under various economic and policy scenarios. Factors considered in the analysis shall include, but shall not be limited to, the following:

The actuarial performance of all cohorts of loans insured by the Mutual Mortgage Insurance Fund, including all available post-1985 books of business. Specifically, the overall default rates and claims (loss) experience of these loans should be considered.

The effect of the Mortgagor Equity rule issued by the Department of Housing and Urban Development, which limits the amount of closing costs that can be financed with a Federal Housing Administration mortgage to 57 percent of the total amount of allowable closing costs, on the actuarial status of the Mutual Mortgage Insurance Fund, default rates of Federal Housing Administration borrowers, the relative impact on purchasers of homes at various price levels, and the ability of potential Federal Housing Administration borrowers to purchase homes.

The effect of underwriting changes made by the Federal Housing Administration since 1986.

The effect of the increase in the insurable maximum mortgage amount that was made permanent in the National Affordable Housing Act and the effect of further increasing the maximum mortgage amount.

The impact of a policy to allow "streamlined refinancings" whereby the borrower would not be required to pay an annual premium.

The Federal Housing Administration's accounting method for deferring and amortizing the Mutual Mortgage Insurance Fund single-family one-time premium revenue.

The valuation of delinquent loans for loan loss reserve accounting purposes.

The impact of various assumptions regarding the rate of real home price appreciation and mortgage interest rates.

The effect of various economic conditions, including favorable, moderate, and adverse conditions, on the ability of the Mutual Mortgage Insurance Fund to build adequate capital levels.

METZENBAUM AMENDMENT NOS. 798 AND 799

Mr. METZENBAUM proposed two amendments to the bill H.R. 2519, supra, as follows:

AMENDMENT NO. 798

At the appropriate place, insert the following:

SEC. . EXTENSION OF PERIOD APPLICABLE TO SINGLE FAMILY HOUSING.

(a) IN GENERAL.—Section 21A(c)(2)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(c)(2)(B)) is amended by striking "3-month" each place it appears and inserting "5-month".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to eligible single family properties approved by the Resolution Trust Corporation on or after the date of enactment of this Act.

AMENDMENT NO. 799

Insert on page 95, after line 12, the following:

The Office of Inspector General of the Resolution Trust Corporation shall review by September 30, 1993, each of the agreements described in section 21A(b)(11)(B) of the Federal Home Loan Bank Act and determine whether there is any legal basis sufficient for rescission of the agreement, including but not limited to, fraud, misrepresentation, failure to disclose a material fact, failure to perform under the terms of the agreement, improprieties in the bidding process, failure

to comply with any law, rule or regulation regarding the validity of the agreement, or any other legal basis sufficient for rescission of the agreement. After such review has been completed, and based upon the information available to the Inspector General, the Inspector General shall certify its findings to the Resolution Trust Corporation and to the Congress.

MIKULSKI AMENDMENT NO. 800

Ms. MIKULSKI proposed an amendment to the bill H.R. 2519, supra, as follows:

At the appropriate place in the bill, add the following new section:

SEC. . The limitation on assistance under section 234(b) of the Cranston-Gonzalez National Affordable Housing Act shall not apply to community action agencies as specified in section 673 of the Omnibus Reconciliation Act of 1981, with respect to funds made available under this Act, whenever expended.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, FISCAL YEAR 1992

ADAMS AMENDMENT NO. 801

Mr. ADAMS proposed an amendment to the bill (H.R. 2699) 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, as follows:

On page 4 of the bill, at line 13, delete "$949,000" and insert "$799,000".

On page 8 of the bill, at line 8, delete "931,785,000" and insert "$931,636,000".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, at 3 p.m., July 18, 1991, to receive testimony on S. 1018, legislation to establish and measure the Nation's progress toward greater energy security.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, at 9:30 a.m., July 18, 1991, to receive testimony from William Harper, nominee for Director of Energy Research, U.S. Department of Energy.

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

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Employment and Productivity of the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Thursday, July 18, 1991, at 9:30 a.m., for a hearing on "Women and the Workplace: Looking Toward the Future."

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on July 18, 1991, beginning at 10 a.m., in 485 Russell Senate Office Building, to consider for report to the Senate: S. 291, San Carlos Apache Water Rights; S. 1350, Zuni River Watershed Act of 1991; S. 668, Consolidated Environmental Grants; S. 362, Mowa Band of Choctaw Indians Recognition Act; S. 45, Jena Band of Choctaw Indians Recognition Act; and S. 374, Aroostook Band of Micmacs Settlement Act, to be followed immediately by a hearing on S. 1287, Tribal Self-Governance Demonstration Project Act.

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

SUBCOMMITTEE ON MERCHANT MARINE

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Merchant Marine, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on July 18, 1991, at 3:30 p.m. on the Federal Maritime Commission reauthorization.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 18, at 2 p.m., to hold a hearing on four pending treaties: Treaty Docs. 101–14; 101–15; 101–17; and Treaty Doc. 99–29.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 18, at 11 a.m., to hold a nomination hearing on Charles Untermeyer, to be an Associate Director of the U.S. Information Agency.

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

COMMITTEE ON THE JUDICIARY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, July 18, 1991, at 10 a.m.

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

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Wednesday, July 18, beginning at 9:30 a.m., to conduct a hearing on legislation to reauthorize the Clean Water Act, with special emphasis on coastal protection, clean lakes, and the Great Lakes and Mexico border areas.

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

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, July 18, beginning at 2 p.m., to conduct a hearing on legislation to reauthorize the Clean Water Act, with special emphasis on compliance and enforcement, State certification of Federal projects, and miscellaneous topics.

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

SUBCOMMITTEE ON GOVERNMENT INFORMATION AND REGULATION

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Government Information and Regulation be authorized to meet on Thursday, July 18, 1991, at 9:30 a.m., on the subject: To study various proposals to regulate GSE's and to examine risks to the Federal Government.

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

ADDITIONAL STATEMENTS

"ALEXANDER THE GREAT" OR JUST ANOTHER SECRETARY OF EDUCATION?

• Mr. SIMON. Mr. President, it was a happy surprise to pick up the publication, "Black Issues in Higher Education" and see an article by William A. Blakey, better known as "Bud" Blakey, now an attorney in Washington, DC, and for 9 years the person who headed my education efforts and served as staff director and counsel for my subcommittees in the House and Senate.

I have to agree completely with what Bud Blakey has to say. It is certainly true that when Lamar Alexander was named Secretary of Education our hopes were very high, perhaps unrealistically high.

Those expectations have been lowered.

But it is not too late for the Secretary of Education to contribute a great deal to this Nation in the field of education, and I hope he will do that.

It is typical of Bud Blakey that he challenges all of us, including the Secretary of Education.

Mr. President, I ask to insert his article into the RECORD at this point:

The article follows:

"ALEXANDER THE GREAT" OR JUST ANOTHER SECRETARY OF EDUCATION?

Since the creation of the Department of Education in 1980, the Department's chair at the cabinet table has been questioned and, with one exception, quietly occupied by a succession of individuals lacking the educational experience and political expertise to fulfill the dreams and expectations of many in the education community who looked forward to the day when "education" would not have to take a back seat to health and welfare programs on the Secretary of HEW's list of principal priorities. Hindsight being 20/20, former HEW Secretary Joe Califano may have been right when he predicted that education would suffer if the protective wraps of the larger HEW programs were removed. Irrespective of former Secretary Califano's prediction, it is clear that the Department of Education has suffered through a succession of inferior appointments to the cabinet post, and that the department has been exposed to numerous civil service retirements and departures, and has served as the graveyard and personnel dumping ground for many Reagan era Neanderthals who don't know the difference between at Pell Grant and a food stamp.

Secretary Alexander's appointment was welcomed by most in the education community—with high hopes of real secretarial and presidential leadership—and as the chance to have someone other than the Office of Management and Budget (OMB) making the administration's education policy decisions. The higher education community, in particular, was hopeful, since the first issue to be addressed by the new secretary would be the reauthorization of the Higher Education Act.

This then is an early attempt to assess the Secretary's performance after fewer than 50 days in office. Some will say any assessment is premature and hasty. My own view is we don't have time—in minority access to and success in higher education terms, in workforce readiness terms, nor in high school drop-out or college preparation terms—to wait to determine whether we have an "apostle of the Reagan past" or an "advocate for our education futures" at the Department of Education.

I have chosen three measuring rods to evaluate the Secretary—(1) his appointments (and terminations), (2) his legislative proposals and the Bush administration education agenda, and (3) his independence/willingness to listen to others outside the Department in formulating departmental party.

Shortly after his arrival, Secretary Alexander asked for and received the resignations of one-half of his senior staff—the presidentially appointed assistant secretaries for postsecondary education; research and improvement; and legislation and public affairs; and the general counsel. The deputy secretary resigned as well. The only common denominator among those he kept and those he "fired" appears to be White House political connections. Asked to resign were Dr. Ted Sanders, the undersecretary; Dr. Leonard L. Haynes (one of only two Black Americans in the group) who served as assistant secretary for postsecondary education; Nancy Kennedy, the assistant secretary for legislation; Edward Stringer, the general counsel; and Christopher T. Cross, assistant secretary for research and improvement (who was promised a choice of two other jobs which did not materialize).

While some have suggested that these resignations could be justified on competence grounds, that seems unlikely given the retention of Assistant Secretary for Civil Rights Michael Williams after he violated the procedural and substantive rules of Washington's political bureaucracy—when he proposed to reverse 27 years of civil rights law in a press release—making it difficult to find someone who had demonstrated less political sophistication or lack of knowledge of his position!

After a trip to the White House woodshed and a torrent of embarrassing non-explanations of the new civil rights policy on minority scholarships, a new policy was articulated—to save Williams' and the president's collective face—but the new policy was more contrived and legally unsupportable than the initial one. Even if one gives the Secretary a "C" for removing those who were allowed to resign, he gets a "D" on Williams' retention on substantive grounds, and an "F" for his lack of political sophistication. (Finding another position for Williams should not have been a problem since he had already had two other Bush administration jobs in *less than two years.*) No, these decisions were apparently made on a "who-do-you-know," not "what-do-you-know" basis.

The Secretary is to be commended, however, on his appointment of Xerox CEO David K. Kearns. If Mr. Kearns sticks to trying to make the train at the department run on time (as he promised the Senate Labor and Human Resources Committee he would), rather than selling the "Education 2000" choice proposals to corporate America (which he will be told by the Republican National Committee to do and tempted personally to do), this could be the best step President Bush and the Secretary could take. After all, there is much to do to make the department more efficient and effective—implement the National Student Loan Data System (five years authorized, three years appropriated, but not yet implemented), assure that departmental regulations are published on time, especially those affecting the Stafford Loan Program (GSL); balance the Office for Educational Research and Improvement agenda so that it examines both elementary/secondary and postsecondary issues; implement the Department of Education Organic Act by merging some of the as yet unmerged research and policy advocacy portions of the department leftover from the 1980 separation from HEW; collect those student loans and monitor those "trade schools" that rip students off; crack down on the traditional sector schools with equally horrible low-income and minority admissions, retention and graduation records, etc. The Secretary gets an "A" for the appointment only if Mr. Kearns passes his final exam.

The Secretary has produced little, if anything extraordinary or visionary in the Higher Education Act narrative submitted to the Speaker of the House on April 30, 1991. Although the higher education community was led to believe that the Secretary would review "everything" after his confirmation and changes could be anticipated when the legislation was sent to the hill, the speaker letter reveals little that is new.

A thoughtful proposal on program integrity, rather than trying to shift the department's responsibility and the blame to the regional and national accrediting agencies, which the Secretary approves, or to the states (where there is little in terms of knowledge or manpower to fulfill the states' role), would have been helpful. We need something that would *frontally* address low- and middle-income student access/success problems, and would alleviate the enormous burdens that low- and middle-income students, who qualify for a loan, when they seek access to college. Even the much heralded "direct loan" alternative would look good to many if some one would tell us *where* we intend to get the annual $13 billion from for the fiscal years 1992-97; *what* agency is going to administer the program at the federal level; and *how* do institutions like Knoxville College in Tennessee and Millsaps College in Mississippi survive if they don't want to be responsible for processing applications, disbursing and collecting GSL loans?

Rather than a much-needed, well-thought out Higher Education Act reauthorization proposal, we get a mixture of pablum and politics called "Education 2000." More accurately it should be called "Education 1992" since its real purpose is to ride the education issue into and through the 1992 presidential election. Marlin Fitzwater, the President's press secretary, said it all when he said that ". . . this would be the President's highest priority between now and 1992." Nothing the President has proposed in Education 2000 can be accomplished at the federal, state or local level within that time frame. We are left to conclude that the purpose of the proposal is politics not education reform.

Rather than pablum, the President could do something concrete—like fulfill the 1988 campaign pledge to fully fund the Head Start Program—where the reneging started with the submission of the FY 1992 budget. Rather than creating a model school in each Congressional district, why not support the equalization of expenditures effort already underway in the states—using the Kentucky Legislature's education reform and revenue equalization programs as a model. Rather than *acting* like the Education President, including reading lessons with the kiddies—some of whom don't know who he is—*be* the Education President by setting a good example in the federal government by keeping at least one promise to tomorrow's workforce! The President and the Secretary will receive a "D" for doing nothing for four years.

The signs, unfortunately, do not bode well for Secretary Alexander to fulfill my decade-long hopes for a great Secretary of Education and for dynamic leadership in the area *most critical* to the survival of America as we knew and know it.

The Secretary's statements, following consideration of the continued certification of the Middle States Association of Colleges and Schools by the National Advisory Commission on Middle States' proposed use of a diversity standard as one criterion to be used in granting or denying accreditation. His expressed view that a diversity standard represents a "coercive restriction" appears to not only lean to the starboard on the "minority scholarship" and diversity issues, but may indicate he has already adopted the C. Boyden Gray/Department of Justice posture which is in opposition to minority scholarships. I hope I am wrong.

Who is the Secretary listening to—Bob Atwell, Chester Finn, Mike Farrell, Boyden Gray or John Sununu—on higher education issues?

In case you have not already guessed, I am disappointed in Secretary Alexander. My hopes were perhaps too high, only high enough to meet the dreams of all the eagles I know at Tougaloo and Talledega colleges, all of the hopeful faces I have seen at the Oyster School and Benjamin Banneker High in the District of Columbia, and all of the expectant hearts and heads at the Art Institute of Atlanta and Chicago State University.

Mr. Secretary, do we have time to wait for you to lead?•

A TRIBUTE TO THE VOTERS OF DENVER AND TO WELLINGTON AND WILMA WEBB

• Mr. WIRTH. Mr. President, on June 18, 1991, the voters of Denver, CO, elected a new mayor, Wellington Webb. The people did more than elect a new mayor, however, they also sent a strong message that racism has no place in politics—and that electing the best candidate to office depends on lively and intelligent public debate about issues that concern people and their lives, not on the color of one's skin.

Denver's mayoral campaign attracted a great deal of national attention, Mr. President, not only because of the contrasting campaign styles of the candidates—but also because the two candidates were both extraordinarily able men who also happen to be black Americans, Wellington Webb and Norm Early. Minorities comprise less than 20 percent of Denver's population—and many political experts and commentators were, therefore, astonished when the primary election involving five candidates narrowed to these two men. The experts should not have been surprised. The people of Denver are not interested in racial labels or political slogans—they demanded and got an election campaign based on a substantive discussion of the issues.

I believe that the Denver mayoral election of 1991 was a tribute to the vision, idealism, and progressive spirit of the voters of Denver. It was also a personal triumph for two Denverites of outstanding stature in Colorado politics, Wellington and Wilma Webb.

Mr. President, I have known and worked with the Webbs for many years. Wellington is a man of immense talent and experience in public life having previously served in the Colorado Legislature, the Carter administration, Gov. Dick Lamm's administration and as Denver city auditor. His wife, Wilma Webb, is also a distinguished public servant currently serving in the Colorado General Assembly.

Together, Wilma and Wellington have forged a reputation of outstanding public service for the citizens of Denver and Colorado. As Wellington begins his term as the new mayor of the city and county of Denver, I wanted to take a moment in this forum to wish him the very best of success—and to congratulate the citizenry of Denver for their commitment to a style of politics that brings people together, rather than driving them apart.•

CAPTIVE NATIONS WEEK

• Mr. LEAHY. Mr. President, I rise today to call attention to an anniversary we would all rather not have to commemorate. July 14 marked the beginning of Captive Nations Week. For the past 33 years, we have paused during the third week of July to remember those nations that—despite their legitimate demands for sovereignty—are denied the independence that we in the United States have enjoyed for more than two centuries.

Throughout those years, the Baltic States—Lithuania, Latvia, and Estonia—have belonged to that number.

The captivity of the Baltic States dates back to a 1939 agreement between the Soviet Union and Germany, the Molotov-Ribbentrop pact. With this pact, Hitler and Stalin divided Eastern Europe illegally between themselves. The Baltic States have been under Soviet rule ever since.

During the last few years, the world watched with anticipation as a new generation of Soviet leaders struggled boldly to bring the Soviet Union back from the brink of collapse.

We have seen Eastern Europe throw off its shackles. We have seen the Soviet Government take its first tentative steps toward a market economy. And we have looked on as Soviet citizens have voted in the first free elections of their lives.

Not all that we have seen has been pleasant. For many, the last 2 years have brought fear and deprivation, not freedom. Countless Soviet citizens have had to balance their new freedoms against violence, cold, and hunger.

But perhaps the most bitter fate has befallen the people of the Baltic States. In its efforts to right the wrongs of the Stalin years, the Soviet Government has ignored one terrible Stalin legacy: The captivity of the Baltics. Fifty-two years after the signing of the Molotov-Ribbentrop pact, and despite all the efforts of the Baltic peoples to free themselves, the Baltic States remain under Soviet occupation.

The Baltic States have justice on their side. The Molotov-Ribbentrop pact was not legitimate in 1939, and it is not legitimate today.

It has now been more than a year since Lithuania's formal declaration of independence. To date, the Soviet Union has only responded to this declaration, and to similar moves by the other Baltic Republics, with threats and violence.

The Soviet Union has attempted to extort promises of fidelity from the Baltic States by denying them vital food and medical supplies.

Its armed forces have carried out unexplained acts of violence against the Baltic States. Just 3 weeks ago, armed men stormed the offices of the telephone network in Vilnius Lithuania, resulting in a 24-hour disruption of communications. The attack is reported to have been carried out by Soviet black beret troops.

The Soviet Government has attempted to intimidate and dishearten the Baltic peoples with a vast and imposing troop presence on Baltic soil. In Estonia, for example, the Soviets have stationed one soldier for every five civilians.

In short, the Soviet Government has brutally rejected the Baltic States' legitimate desire to rule themselves in peace.

These events are particularly unfortunate at a time filled with possibilities for improved United States-Soviet relations. Indeed, the significance of the Baltic States' captivity is twofold. It is not only the subjugation of three nations deserving of liberty—as if that were not enough. It is also a stumbling block on the road to a new era in United States-Soviet relations—a long-overdue era of goodwill, cooperation, and security.

I hope that the Soviet Union will see the folly of its continued occupation of the Baltic States. I recognize the delicate nature of the Soviet Union's internal politics at this time, and the complexity of action such an acceptance would require.

But it would be blindness to deny the fact that security and a lasting peace in the Baltic States will be achieved only when the Soviet Union ends its decades-old, illegal occupation of that region. I therefore urge the Soviet Government to end this occupation with all possible speed.

It is my hope that by next year at this time, the Baltic States will no longer be captive nations, but sovereign nations enjoying the independence they so richly deserve.•

SUCCESS STORIES FROM SMALL-TOWN ILLINOIS

• Mr. SIMON. Mr. President, the decline in the agricultural economy throughout the Midwest has had a severe impact on our small towns. We continue to see many small towns lose jobs and people. But some communities are proving it doesn't have to be that way. A little ingenuity and hard work can go a long way. I have written a column for newspapers in my State about some small-town success stories and I ask to have it printed in the RECORD.

The article follows:

SUCCESS STORIES FROM SMALL-TOWN ILLINOIS

It is discouraging to travel in Illinois (and any other state) and see small towns declining. I speak with prejudice as someone who has spent most of his life in smalltown America.

Yes, there are flaws in the small town, but there are also virtues, and it is no accident that a disproportionately high percentage of those who are the nation's leaders come from small town America.

Is the decline of rural communities inevitable?

There are those who say it is, who look at the declining percentage of our population involved in family farms, and view the dying of so many small communities as certain as the rising of the sun.

Let me tell you about two communities—among many in Illinois—that are not giving up. One is Ohio, Illinois (population 544), and

the other is Oakland, Illinois (population 1,035).

Many years ago, I spoke at a school commencement in Ohio, Illinois, but more recently the schools of Ohio have faced closing because of declining population of the community.

The people decided to do something. They formed the Ohio Growth Foundation and promised the foundation would pay the first $3,000 in real estate taxes for anyone who would buy and move into an existing vacant house in Ohio. They promised anyone who built a new home $5,000 in similar tax relief.

Raising the money has not been easy.

But the program has been successful. Vacant homes have been sold and new homes built. A new corporation has been formed to build houses, with the profits from the company going to the Ohio Growth Foundation, to help pay for the real estate tax relief.

Not only are there more people in Ohio now, four new small businesses have located in Ohio. Local leadership turned the corner for Ohio, Illinois.

I heard about Oakland's efforts and told my staff I wanted to visit Oakland.

Small communities that want to revive themselves would do well to send a small committee to Oakland and Ohio to see how they do it.

Oakland's citizens have done a host of small things to make this community distinctive, everything from an old-fashioned inn on the square where you can stay and have a meal, to a fine antique store, appropriately called The Log House.

They have promoted recreational facilities, including a golf course, tennis courts, a swimming pool, and a lake. The town now has a small bakery. How many small towns of 1,035 do you know that have a bakery?

And once a year, the last Saturday in August, they have what they call a "Community-Wide Yard Sale," sort of a garage sale that the whole town participates in.

If you write, they'll send literature that makes Oakland look like the center of the universe.

What is happening in Ohio, Illinois, and Oakland, Illinois, may not seem important, but it is.

It illustrates what the spark of leadership can do to turn communities from dying small towns to thriving small towns.

That's good for the nation.

And perhaps if small towns can honestly face their problems, and with effective leadership turn things around, so can the nation.●

ORDERS FOR TOMORROW

Mr. FORD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:15 a.m., Friday, July 19; that following the prayer, the Journal of proceedings be deemed approved to date; that the time of the two leaders be reserved for their use later in the day; and that there then be a period for morning business with Senators permitted to speak therein.

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

Mr. SIMPSON. Mr. President, let me just say that I too very much enjoyed this bit of, I guess you would call it, debate which we do not do much of in this place, and I am having to hear and listen to my friend from Minnesota, to hear what he is saying in his passion, and that is something I will learn, and I promise to do that.

As for the minority whip's relationship with the majority whip, I do not think there are two people that understand each other better than the very earthy, bright, and energetic Senator from Kentucky.

Mr. FORD. Hold back on the word "earthy."

Mr. SIMPSON. I do not dare hold back on that because when the debate is over he will reign upon me, and I have regard for him, and it is what the system is all about. Other countries do not understand it, but it works.

RECESS UNTIL TOMORROW AT 9:15 A.M.

Mr. FORD. Mr. President, I would like to have the last word.

If there is no further business to come before the Senate today, and if the acting Republican leader has no further business, I now ask unanimous consent that the Senate stand in recess as under the previous order until 9:15 a.m., Friday, July 19.

There being no objection, the Senate, at 9:10 p.m., recessed until Friday, July 19, 1991, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate July 18, 1991:

NATIONAL COUNCIL ON DISABILITY

ELLIS B. BODRON, OF MISSISSIPPI, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1993, VICE MARGARET CHASE HAGER.

CONFIRMATIONS

Executive Nominations Confirmed by the Senate July 18, 1991:

DEPARTMENT OF STATE

DAVID FLOYD LAMBERTSON, OF KANSAS, 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 KINGDOM OF THAILAND.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

MICHAEL J. MALBIN, OF NEW YORK, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 26, 1994.

HARVEY C. MANSFIELD, JR., OF MASSACHUSETTS, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 26, 1994.

ROY L. SHAFER, OF OHIO, TO BE A MEMBER OF THE NATIONAL MUSEUM SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 1994.

DEPARTMENT OF LABOR

STEVEN I. HOFMAN, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF LABOR.

DEPARTMENT OF EDUCATION

JEFFREY C. MARTIN, OF TENNESSEE, TO BE GENERAL COUNSEL, DEPARTMENT OF EDUCATION.

DIANE S. RAVITCH, OF NEW YORK, TO BE ASSISTANT SECRETARY FOR EDUCATIONAL RESEARCH AND IMPROVEMENT, DEPARTMENT OF EDUCATION.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

FERNANDO J. GAITAN, JR., OF MISSOURI, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI.

CLYDE H. HAMILTON, OF SOUTH CAROLINA, TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT.

MORTON A. BRODY, OF MAINE, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MAINE.

PUBLIC HEALTH SERVICE

THE FOLLOWING CANDIDATE FOR PERSONNEL ACTION IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW AND REGULATIONS:

1. FOR APPOINTMENT:

To be assistant surgeon

DAVID L. SPRENGER