SENATE—*Wednesday, November 20, 1991*

The Senate met at 8:45 a.m. and was called to order by the Honorable WENDELL H. FORD, a Senator from the State of Kentucky.

PRAYER

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

Let us pray:

Come now and let us reason together, saith the Lord: though your sins be as scarlet, they shall be as white as snow; though they be red like crimson, they shall be as wool.—Isaiah 1:18.

Eternal God, infinite in love, help us contemplate the reasonableness of Your gracious mercy as Isaiah understood it. Help us to listen to reason—Your reason. Forgive us for the empty gods we worship, Father, rather than the true God revealed in Scripture. Help us understand that Your perfect love transcends all our failure and sin; that there is nothing we can do to make You love us more than You do; there is nothing we can do to make You love us less than You do. For it is Your perfect nature to love.

Our Father, may we learn to accept Your gracious promise of forgiveness. Deliver us from our tendency to cover guilt, realizing that suppressed guilt is destructive within. You have promised, "If we say we have no sin, we deceive ourselves. * * * If we confess our sin, You are faithful and just to forgive us our sin and to cleanse us from all unrighteousness." Enable us to confess, that we may be forgiven and freed from bondage to unconfessed sin.

In His name who is perfect love. 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, November 20, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WENDELL H. FORD, a Senator from the State of Kentucky, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. FORD 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 period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein.

The Senator from Vermont [Mr. LEAHY] is permitted to speak for up to 10 minutes. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent I be allowed to speak for up to 15 minutes.

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

THE 1974 ELECTION

Mr. LEAHY. Mr. President, I am delighted to see the Presiding Officer, the distinguished senior Senator from Kentucky, a man who served in this Senate with distinction for now nearly 17 years, having been elected in the first week of November 1974.

Mr. President, I recall watching that election with great interest. That was the year I read all the election returns from across the country, alphabetically, beginning with the State of Vermont.

AGRICULTURAL ASSISTANCE TO THE SOVIET UNION

Mr. LEAHY. Mr. President, in the past 3 years, we have witnessed enormous political change in Eastern Europe. The fires of freedom have fanned across the continent, demolishing the Berlin Wall, toppling despot after despot, liberating the Baltic States, and freeing millions from the grip of communism.

Since the failed August coup 3 months ago, events in the Soviet Union have accelerated at breakneck speed. The institutions that once propped up the Soviet state—the Communist Party, KGB, and others—have been dismantled. In the void left behind, the leaders of the former U.S.S.R. and its Republics struggle to define the government or governments that will take its place. And as the Republics lurch toward a still undefined new economic order, rumors of food shortages spawn panic buying and hoarding of scarce commodities.

For most Americans, the August coup attempt was our worst nightmare come true. We and the world breathed a collective sigh of relief when Boris Yeltsin and thousands of Russians defied the coup leaders and stared down their tanks. But it is nothing more than a fool's paradise to think that a coup of the extreme right or extreme left cannot occur again, particularly in an era of scarce resources and tremendous political instability.

The upheaval in the Soviet Union is a watershed in our 75-year relationship with that nation. It presents us with a tremendous opportunity to reevaluate and redefine our relationship with Eastern Europe and to help design a long-term strategy for transforming the Soviet Union into a modern partner in the community of nations. It will also have significant impact on us here at home by freeing up our $300 billion defense budget for important domestic needs and deficit reduction.

But the administration's thinking, as reported in today's Washington Post, fails to take advantage of this historic opportunity. It favors short-term expediencies instead of a long-term coherent foreign policy.

By drifting without a plan or purpose and by failing to coordinate with our Western allies, the administration is letting world events limit our options instead of using American leadership to create new ones. By giving piecemeal foreign aid to the Soviets under the guise of agricultural credit guarantees, the administration is playing a deceptive game with American taxpayers.

In the short run, we and our Western allies may need to send food to the Soviet Union this year so that shortages do not undermine the fragile political reforms now taking place. Short-term tensions will be eased if Soviet citizens do not have to worry about getting their next loaf of bread.

But short-term, emergency food aid is, by definition, a stopgap measure and not a long-term policy. As our world has radically changed, we must develop a long-term strategy, before we commit to a major foreign assistance program for the Soviet Union that involves our allies and reflect several considerations.

First, Americans are rightly divided over the question of aid to the Soviets. They need a clear explanation of how and why we should aid the Soviet Union—and where the money should come from.

In the past, we have given large amounts of assistance to other nations that now challenge us economically. And most Americans are painfully aware of the urgent problems at home,

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

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the dramatic recession, and scarce budget dollars. The American people will support assistance if they understand its purpose and how it serves our national interest. For that reason alone, we need a public and honest debate about the direction the administration plans to take.

But rather than being honest with the American people, the administration is trying to camouflage foreign aid. It wants to use the Commodity Credit Corporation Agricultural Export Credit Guarantee Program through which it entices domestic and foreign banks to loan money so that other countries can buy U.S. agricultural goods. If the foreign government fails to pay back the loans, the U.S. Treasury will.

In the Soviet Union's case, the administration wants to waive the credit worthiness provision of these credit guarantees, increasing the risk that these loans will not be paid back, and thus turning them into foreign aid gifts. If the administration wants foreign aid for the Soviet Union, then it should lay out the case for the American people, followed by a congressional debate and vote. We should not slip into a new foreign aid program through the administration's sleight of hand.

While Americans are generous, we cannot expect American taxpayers to send billions of dollars in development assistance to the Soviet Union when our bridges are crumbling, our schools are underfunded, and our unemployment benefits are running out.

The Soviets' severe economic problems have worsened since the coup, making it questionable whether they will be able to repay these loans in the short term. The administration understands this and proposes waiving the creditworthiness provision of the credit guarantee programs, increasing the risk that these loans will not be paid back, and turning them into foreign aid gifts.

American taxpayers are already spending billions to cover the losses of failed savings and loans; they should not have to spend billions to cover the losses on commercial loans that the Soviets can not repay.

I believe when the time and conditions are right, we will help the people of the former Soviet republics convert from a collapsed nation to one that has a viable free enterprise economy. But if we as a nation are going to commit to do this, we must do it openly and with the support of the American people.

Second, the administration is failing to effectively coordinate our relief efforts with the Europeans and Japanese, at an even greater cost to American taxpayers. Since the end of World War II, the United States has primarily shouldered the personnel and financial burden of protecting Western nations through NATO and other alliances. The Persian Gulf war heralded a new era, establishing the principle of the allies sharing the financial burden of achieving international objectives.

The United States is willing to provide the leadership in forging a new Western relationship with the Soviets; it cannot be expected to shoulder the great portion of the financial burden as well. Other nations, such as Japan and Germany, who now enjoy great wealth but have paid relatively little in the past for Western security, should be expected to pay substantially more now, with the United States paying substantially less. Instead of the administration moving unilaterally, the Western nations should move together and pay together.

Third, economic assistance to the Soviets must take into account their current problems with food distribution—moving food between the farms and cities and from the main government to stores in the Republics, even the small, Central Asian ones. Much of the Soviets' problems stem from an antiquated distribution system, inefficient state planning, and other economic failings—all long-term problems needing long-term solutions, not short-term fixes.

It makes no sense for United States taxpayers to pay for sending the Soviets tons of food over the short term, only to have it rot on the docks or fill the pockets of the elite.

Fourth, in principle, United States aid for the Soviet Union can be designed in a way that serves our economic interests. For example, some of the aid may be used to purchase U.S. goods, machinery, agricultural products, and technology which in turn could help foster some economic growth in the United States. Also, aid may help the Soviets demilitarize their economy and free resources for civilian uses. This could allow the United States also to convert some of its defense expenses to civilian needs.

At the right time, we should be ready to invest in the future of the Soviet Union because it will help us secure our own peace and security and is in our long-term, national interest. While we would prefer the administration develop a coherent Soviet aid policy, Congress will act if the administration will not take the lead. I intend to address broad issues of aid to the Soviets through my role as chairman of both the Senate Agriculture Committee and the Foreign Operations Subcommittee.

The question of aid to the Soviet Union is one of the reasons I decided to delay the foreign aid appropriations bill until next year. This gives the administration time to propose a strategy and program to aid that nation. In the meantime, there is no reason to creep in the back door with a disguised foreign aid package.

There will be few opportunities in our lifetime as great as the one created by the upheavals in Eastern Europe. This is a watershed—one that presents us with a tremendous opportunity to help transform the Soviet Union into a modern partner in the community of nations and to free up defense dollars for important domestic needs. Let us act properly now, not only for our benefit but for our children's benefit.

The PRESIDING OFFICER (Mr. KOHL). The Chair recognizes the Senator from Indiana [Mr. LUGAR].

Mr. LUGAR. I thank the Chair.

NUCLEAR SAFETY AND STABILITY

Mr. LUGAR. Mr. President, I join with the distinguished Senator from Oklahoma in a bipartisan plea this morning for our country to recognize great dangers in the Soviet Union. These great dangers are posed to nuclear safety and stability by the profound changes occurring in the Soviet Union. The United States has been slow to recognize these dangers; the Congress has been even slower in debating the need and means to do something about it.

These dangers are threefold:

First, the process of devolution of political authority that is taking place in the Soviet Union creates the danger that the ultimate disposition of nuclear weapons in the new political system will not be conducive to their safety or to international stability.

Second, there is a danger of seizure, theft, sale or use of nuclear weapons or components during the period of transition, particularly if a widespread disintegration of the custodial system should occur.

Third, there is a danger that any weakening of control over weapons and components could spill outside the territory of the former Soviet Union, fueling nuclear proliferation worldwide.

All three of these dangers warrant immediate consideration of United States leadership to achieve preferred outcomes as the Soviet empire dissolves and its nuclear weapons complex devolves to successor states.

Nonstrategic nuclear weapons within the former Soviet Union are a source of major concern because of their great number and variety, and because they are more widely dispersed among the Republics than strategic weapons. Moreover, the system of procedural and technical safeguards that has prevented unauthorized seizure or use of these weapons for over 40 years offers no guarantees in the face of potential widespread social disorder on the horizon. Thus, removal of these weapons to central storage and ultimately destroying them is of critical importance.

Leaders of the Soviet Union and of individual Republics have stated a willingness to destroy thousands of strategic and tactical nuclear weapons that fall outside existing or prospective arms control regimes. President Gorba-

chev has announced that the Soviet Union wishes to destroy its nuclear artillery shells and mines, its nuclear warheads for tactical surface-to-surface missiles, as well as part of its stockpiles of nuclear antiaircraft missile warheads, tactical nuclear weapons on-board ships, and nuclear bombs carried by land-based naval aircraft.

At the Republic level, Ukrainian officials have called for the destruction in place of strategic nuclear weapons that otherwise could be retained, and the Russian President has urged the central authorities to eliminate strategic weapons permitted under START as opposed to transporting them to Russian soil.

In recent conversations here in Washington, Soviet officials have pointed to nearly 15,000 nuclear weapons that they would like to destroy with our help. In response to Gorbachev's proposal for joint activities involving "technologies and procedures for the dismantling of nuclear explosive devices," President Bush suggested that the two countries explore cooperative ventures designed to implement the storage, transportation, dismantling and destruction of nuclear weapons and to enhance existing arrangements for the physical security and safety of nuclear weapons.

The chairmen of the Armed Services Committees in both Houses made an effort to address the issue. The reactions in both Houses were such that provisions dealing with the problem were stripped from the conference report. But this quarrelsome response to a growing strategic danger does not absolve the Congress of its responsibilities.

Nuclear weapons do not simply fade away; they must be disabled; they must be dismantled; they must be destroyed. As the chairman of the Armed Services Committee pointed out on the Senate floor last week, the dismantling and destruction of nuclear weapons requires two things currently unavailable in sufficient quality and quantity to Soviet and Republic leaders—technology and resources. In addition to technical know-how, the Soviets desperately need centralized nuclear storage facilities, transportation networks, and dismantling plants.

We can either seize the opportunity for cooperative efforts in this field now or witness a quantum leap in the proliferation of weapons of mass destruction in the next few years. The time to establish an antiproliferation regime is now. An appropriate place to start again is with the former Soviet Union and its Republics, seemingly willing partners in destroying weapons before they can proliferate.

The United States is not in a position to call the shots either as to the dissolution of the Soviet Union and eventual forms of successor states, or as to the devolution or dispersal of Soviet nuclear forces among them. But the United States does have important leverage if its preferences and influences are identified early and our leadership brings swift and coherent action.

I will be talking with Senate colleagues and administration officials who share a determination to act in the next few days. We must find appropriate steps to take before the Congress adjourns. The obvious and enormous advantage of substantial Soviet denuclearization is that it would eliminate a substantial portion of the nuclear threat to United States security and survival. The destiny of the 27,000 nuclear weapons on the territory of what is increasingly called the former Soviet Union is an urgent and paramount concern. It is one without precedent and therefore without settled guidance. It calls for the initiative of specific actions now.

Also requiring our immediate attention is the granting of agricultural credits and specific humanitarian assistance to the former Republics and the Soviet Union.

The Soviet Union has been one of our best export markets for the past two decades. In the past 10 years, the United States has exported about $20 billion in commodities. Since our purchase of Soviet agricultural products is minimal, most of this trade registers on the positive side of the balance sheet.

All of these sales have been on commercial terms and the Soviets are current in their payments under the Export Credit Guarantee Program. The next payment is due in January 1992.

The debate on the Soviet Union has largely ignored one very important factor—that exports to the Soviet Union are important to our domestic farm economy and to farm-related jobs in America. The GAO said in its report on Soviet trade this summer that "the United States share of Soviet imports has a significant impact on U.S. farm programs, Government outlays and farm incomes." "* * * Large exports to the Soviet Union," the GAO noted, "have contributed to higher U.S. farm prices and reduced Government outlays and food stocks."

The current issue is what kind of presence we want to have in the Republics as new political entities emerge. If we are not there in some way, will we abandon future cash markets to competitors? If we withhold humanitarian assistance, will we also be withholding any attempt to have a positive influence on a chaotic and potentially dangerous situation?

The United States has a wide range of programs which the administration can now use—donated food aid, commodities sold on very concessional terms, export credits, and technical assistance. The administration may need authority and flexibility to react to this precarious situation.

I have asked the administration to declare what type of authorization, if any, it needs to carry out a program in the Republics this winter. Perhaps food aid, technical assistance and export credit authority can be met by borrowing from other programs and then replenishing these programs through supplemental legislation. Perhaps authorization is needed now. If so, we should debate and enact authorization promptly.

I thank the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank my colleague, the distinguished Senator from Indiana, and the senior member of the Foreign Relations Committee of this body. It is my privilege very often to work with him on both sides of the aisle, across the center line here on matters of importance to our national security, both in his capacity, as I say, as the senior and respected member of the Committee on Foreign Relations of this body and in my capacity as chairman of the Senate Intelligence Committee.

I am proud to join with him today again in such a joint effort, specifically to call upon all of our colleagues in both parties and leadership of both Houses of the Congress, and in the White House, and in the administration to undertake jointly a bipartisan truce on the issue of what we should do about helping the Soviet Union at this time of crisis.

This is no time for partisan politics. This is no time even with an election less than a year away for each side to try to score political points against the other. This is a time in which our national security is gravely threatened. The American people need to be told the truth, and we need to come together in a bipartisan fashion to deal with this crisis before this Congress adjourns for the year prior to Thanksgiving.

We are now in a race against the clock to get something done to protect our national interest. We are often accused, Mr. President, in this body and in the Congress, and indeed all policymakers of our Government, of having a short attention span. All of us understood exactly what was at stake during those critical hours when there was an attempted coup in the Soviet Union, the attempt to overthrow Mr. Gorbachev, and the attempt to put the leaders of the KGB and the military back in charge of the Soviet Government. We all knew that if that side had prevailed and that coup attempt succeeded the arms race would have been reignited.

I had a meeting with Mr. Kryuchkov, one of the coup plotters, head of the KGB, in April. After that meeting I came away very alarmed. It was obviously clearly his intention if he had any say about it to resume the cold war, to resume the arms race. All of us

know would have happened if those kinds of people had come to power in the Soviet Union. The arms race would have been resumed and our ability to deal with the serious domestic problems here at home—our own economic problems, the problems of the unemployed, the problems of rebuilding our educational strength and our economic strength of this country—would have again faced the competing demands to provide the deterrence necessary if an arms race had resumed and if the nuclear threat from the Soviet Union has been resumed at that point.

Mr. President, that danger has not gone away. It is simply present now in a new form, and we should look at it clearly. Let us remember that just because a person does not call himself a Communist it does not make him any less dangerous if he comes to power in a nation and has at his disposal over 10,000 strategic nuclear warheads pointed at the United States of America. Just because he does not call himself a Communist does not mean that he could not emerge as a real threat to the national security of this country.

Adolf Hitler did not call himself a Communist. But no one would argue that he was not a threat to the rest of the world at the time in which he was holding center stage in Germany.

The warning signs are all around us. In the past week I had an opportunity to speak with our former Ambassador to the Soviet Union, Ambassador Matlock. I had opportunity to visit with former Senator Bellmon, our colleague from Oklahoma, who served with all of us here and returned from the Soviet Union and reported on findings there.

I had opportunity to visit with Chairman Yakovlev, leading reformer, Chairman of the Democratic Reform Coalition in the Soviet Union, a man who predicted that the coup attempt would occur 3 days before it did occur, and who had been warning of it for some time before that.

We all read the statement of Ambassador Strauss about the severe problems in the Soviet Union. We are aware of the fact that in the last Russian Republics Presidential election Mr. Zhirnovski, an extremist, a person who appeals to racial divisions and extreme Russian nationalism, received over 60 percent of the vote in that election, indicating and signaling there is that kind of attitude that can be exploited in very difficult economic times to come.

We read the economic projections of Soviet and American economists like Mr. Samuelson and Mr. Popov, who indicate that this year alone the GNP will probably decline in the Soviet Union between 10 and 25 percent. By comparison, Mr. President, during the Great Depression, the largest drop we had in 1 year in the GNP in this country was about 8 percent. So we are talking about catastrophic change.

Seven hundred thousand soldiers are returning to the Soviet Union from Eastern Europe. There is no place to house them.

There has been a one-third drop in their grain production in this year. There is a real risk that people will be hungry within a few weeks in the Soviet Union.

Mr. President, this is not a matter that should be viewed as a normal discussion of foreign aid. We have had a lot of discussion in this Chamber and in our country recently about the need to pay attention to domestic priorities. I am one of those who agrees with those who made the argument that said we must take care of our problems here at home or not be able to help anyone else in the rest of the world. We are not talking here about the usual situation of giving foreign aid to some other country. We are talking about a national security issue. We are talking about the fact that very serious observers, our principal experts in this country, and the wisest observers within the Soviet Union itself, are warning us that there is a real possibility of serious social and political disruption within the next few months in the Soviet Union that could bring people to power who would be every bit as dangerous as Mr. Kryuchkov and fellow coup plotters in terms of resuming the cold war and arms race. That is what we are talking about, a national security issue, and we must view it with our eyes wide open.

The Senator from Indiana has talked about the risk of nuclear proliferation. The problem of all of these nuclear weapons and no technology and no economic means available to store them and to begin to destroy them.

He has talked about the fact that we need to have conversion of the current Soviet defense establishment into a peaceful, productive capacity that will no longer threaten the United States or be a drain on their economy as well.

Two chairmen of the Armed Services Committees of the House and Senate have tried to deal with this matter. They pointed out this risk. They did not try to take domestic social program funds to deal with it. They took defense funds in an attempt to deal with it because there is a national security matter. It is not a matter of competing with domestic needs.

Mr. President, that was a worthy effort. It did not succeed. It is time to go back to the drawing boards and look both at the immediate need in terms of preserving social and political stability during the winter so that people are not hungry. And knowing the lack of infrastructure for delivering of food in the Soviet Union we must also think about the possibility of our using our military to get aid directly into the cities they are needed, so it will not be wasted, so it will not be sent places where it is not needed, and so we can preserve stability, prevent a return to the cold war in the arms race by the wrong people coming to power within the Russian Republic, or what has been called the Soviet Union in the past, and begin this process to seize the opportunity that may never come again, as the Senator from Indiana has said. It may never come again where we have leaders who are in place ready to work with us to destroy the nuclear arsenal of the Soviet Union which has threatened us for so long, and which has cost us billions, indeed, trillions of dollars in the arms race in the past.

Mr. President, we simply must not be frozen in place of this point in time. History will judge us, and the American people will judge us, particularly, in the next generation if we do not do something now. For us to be frozen in place because we are worried about who will get the political credit or the political blame for doing what is necessary for the national security interests of this country is dead wrong.

If it is putting partisan politics and personal politics ahead of the national interest, there is a time and a place for politics. We have a two-party system. I believe in it. There is a time for two-party competition. There is also a time for something that is very old-fashioned, a word we do not use very often: statesmanship.

This, Mr. President, is a time for statesmanship. It is a time for each side, the political leaders of both of our parties to say, we are not going to try to score political points on this one. It is too serious. We are simply prepared to sit down together and work out a new plan and a new solution for dealing with this crisis and for protecting the national security interests of the United States of America. Let us tell the people the truth.

It is my hope that the Speaker, the majority leader, and the minority leadof the House, that our two leaders, our majority leader and minority leader, will send signals right away, today, this morning, to the President and to the Secretary of State and to the Secretary of Defense, and others, saying we are ready to sit down together to leave politics parked at the curb outside of the conference room and to sit down together to work out an American plan to deal with this threat to our national security.

I call upon the President to do the same, to send a signal to the leaders of Congress of both parties that he is also ready to sit down on that basis. I hope that he will call together the bipartisan leadership group, which he has called upon several times, which includes the leaders of the Armed Services, Foreign Relations, and Intelligence Committees of both Houses, the bipartisan leadership of both Houses, to sit down with him and his close Presidential advisers to work out a plan to deal with this crisis.

We simply must not wait. Let us declare a bipartisan truce now on dealing with the problem in the Soviet Union. Let us take it off the table in terms of what we are going to fight about as we approach the next Presidential election, and let us do what needs to be done for the sake of our country.

Time is running. There are few precious days left in the session for us to undertake to put together a plan that will work, that will not waste the taxpayers' money, that will, indeed, use food produced by our people with jobs in this country by our processing plants and farms, and that will utilize national defense dollars because, after all, this is a national security matter.

Let us develop a commonsense plan that the American people will understand, and they will understand this is not about competition with domestic needs, because they will also understand what it will mean to them, what it will mean to them as taxpayers, what it will mean to the unemployed, what it will mean to the homeless, to those who need educational improvements in this country, what it will mean to the middle-income people who need tax relief if the arms race reignites with its billions of dollars of financial burdens.

Let us not miss what is an opportunity, and let us also not fail to take action to confront what, indeed, will become a severe crisis. It may not wait, Mr. President, for us to return here in January. This situation in the Soviet Union may not wait. When people are hungry and when social unrest strikes, and when there is disorder abroad in a capital city, as we saw in Moscow not too long ago, and when we hear the wisest observers of the Soviet Union say Moscow was the cradle of revolution recently, and it can be the cradle of revolution again, but the wrong kind this time; it is just as dangerous for us, even though they may not march under the Communist banner—just as dangerous. They are not going to wait to be told: I am sorry, you cannot act now, or overthrow the Government now and you cannot put in an anti-American leader, one who would reignite the arms race, because Congress is not in session to deal with this problem, and they will not be back until the third or fourth week of January.

It is time for the President and the leaders of both Houses—without regard to party—to prove once again that we can be Americans first and deal with a problem, deal with a threat to our national security.

With all of the criticism of the Congress recently, and of the political system, what a signal it would send to our people if we can demonstrate that we are still capable of setting aside politics and party bickering to be Americans first and deal with an American problem. Let us do it. Let us declare a bipartisan truce on this important issue. Let us do it this morning.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. DURENBERGER. I thank the Chair.

(The remarks of Mr. DURENBERGER pertaining to the introduction of S. 1992 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota [Mr. CONRAD].

FOOD CRISIS IN THE SOVIET UNION

Mr. CONRAD. Mr. President, first I want to join my colleagues who have spoken earlier on the urgent necessity to provide additional credits to the Soviet Union for the purposes of purchasing grain from the United States.

A number of weeks ago I introduced a bill to provide an additional $2 billion in credits to the Soviet Union. Unfortunately, there has been no action in those intervening weeks. The result is the winter in the Soviet Union gets closer, the food lines are growing and, at the same time, in this country we face in the farm crisis the lowest prices for agriculture commodities in 50 years.

Mr. President, that is taking a very tough toll on States like mine. I urge the administration to move more quickly to start to deal with the problems of food crisis in the Soviet Union and a farm crisis right here at home.

(The remarks of Mr. CONRAD pertaining to the introduction of S. 1993 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Chair recognizes the Senator from Illinois.

HOUSING AND THE ECONOMY

Mr. DIXON. Mr. President, the American dream has always been home ownership. A family works hard, buys its own home, and lives happily ever after, at least in the storybooks.

However, the American dream is now becoming an American tragedy for more and more middle- and moderate-income Americans. The dream of homeownership is slipping out of their grasp.

Fifteen percent of all men and over 8 percent of all women in the 25-to-34-age group are living with their parents, an increase of 45 percent since 1970.

Home ownership rates are also declining. Only about half of all young adults now own a home, down from over 60 percent just 20 years ago.

One major reason for that decline is the rising cost of housing. Sadly, it is getting harder and harder for moderate- and middle-income Americans to afford a home. A recent story in the Washington Post, quoting an analysis by Harvard University's Joint Center for Housing Study, stated that in 1970, firsttime homebuyers paid roughly 16.2 percent of their after-tax income for housing expenses; now, they have to spend 29 percent—almost double. What makes it worse is that, now, it is often 29 percent of the incomes of two family members, not just one.

What is the current administration's answer to this growing erosion of the American dream, Mr. President? Based on the evidence, it seems that the administration's answer is to ignore the problem. And the results of that head-in-the-sand attitude are all too clear:

In 1990, housing starts averaged barely 1.2 million units per year, the worst year there are statistics for;

Since 1989, real residential construction has fallen at an annual rate of 8.59 percent, the worst record there are statistics for; and

Since 1989, real nonresidential construction has fallen at an annual rate of 7.53 percent, the worst record there are statistics for.

This administration seems to have little interest in trying to provide good jobs that allow American families to buy homes. It is content to allow those jobs to be exported, and to trumpet the creation of low-paid, fast-food jobs that no one can even live on—let alone buy a home on.

This administration seems to have little interest in trying to provide good, decent, affordable health care for all Americans, so that this source of anxiety is alleviated, and so Americans can devote their savings to making a downpayment on a little house, instead of having to keep the savings aside for a potential catastrophic illness.

This administration seems not to much care that declining real estate values are eroding the value of homes for those Americans who are homeowners. The administration does not seem to be at all worried that this largest source of wealth and retirement security for average Americans is being lost.

This administration has no policy for seeing that affordable housing in good neighborhoods close to places of employment is built. This administration has no policy for getting our economy moving again, and providing any means at all for ordinary Americans to improve their standard of living.

We need leadership, Mr. President. The American public is entitled to leadership from this administration. But Americans are not getting leadership. Instead, what we seem to be getting so far is reminiscent of President Hoover's response to the Great Depression: A policy based on doing nothing

and hoping things get better by themselves.

We cannot afford that kind of do-nothing policy. We need action and we need it now. Americans have always looked forward with the certainty that their children would live better than they do. But that certainty is now gone.

Americans want to own their own homes. Americans should be able to own their own home. They need a government that has affordable, decent housing, good jobs, real educational opportunity, and health coverage that they can count on as their top priorities. I wish that this administration shared those priorities. Based on its record of accomplishments to date, however, I do not believe that it does.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nevada.

FAIRNESS FOR AMERICANS

Mr. BRYAN. Mr. President, I think all of us hope, none more than the American public, that the Congress is soon to complete this session of the 102d Congress. We have been told, and I think rightly so—although I regret to say that it is a necessity—that before we leave, we are going to have to recapitalize the bank insurance fund, something I know the Presiding Officer has been very much interested in and concerned about.

We are also going to have to come up with an additional $80 billion for the savings and loan bailout. That will total $160 billion, since the Presiding Officer and this Senator came to the U.S. Senate in January of 1989. What we are doing is we are picking up the pieces, the wreckage, if you will, of a decade of unparalleled greed in the history of this country.

Not since the days of the robber barons, in the latter part of the 19th century, have we seen such conspicuous excesses, and the cost of the American public, the taxpayers, our constituents, is enormous—$70 billion for the recapitalization of the bank insurance fund and an additional $80 billion for the necessary working capital and other expenses attendant to the savings and loan bailout. As I have said, that will total $160 billion.

The economist Felix Rohatyn, I think, put's it in pretty good perspective, Mr. President, He observed:

> We have just seen the end of the greatest decade of speculation and financial irresponsibility since the 1920's. Financial deregulation, easy credit, regulatory neglect have combined with a degradation of our value system to create a religion of money and glamour. Wealth and fame became the ultimate standard to be achieved at any price. The most conservative and traditional professions such as the law and banking became centers of egregious financial behavior that would have made Diamond Jim Brady seem like a puritan.

Mr. President, if one looks back across this decade that so recently has been concluded, we will see the names that represent the icons of that agreed, the excesses of which Felix Rohatyn addresses himself. They are the Ivan Boeskys, the Mike Milkens, the Fred Carrs, and the Charles Keatings.

Mr. President, not only have the American taxpayers been taken for an enormous loss as a consequence of their actions, but there are literally tens of thousands of individual victims, victims who have lost their money as a result of the violations these men have been involved in, in manipulating the securities markets of this country. Tens and tens of thousands of those individuals have brought actions against the Boeskys, against the Milkens, against the Fred Carrs, against the Charles Keatings.

In June of this year, the Supreme Court decided Lamp versus Gilbertson. It was a shattering blow for those victims, tens of thousands of them. In the Charlie Keating cases alone we know of 23,000 victims, and there are ten of thousands more in the Milken cases, in the Carr cases, and in the Boesky cases.

Let me illustrate, if I may, very briefly. These are typical of the cases in which notions have now been filed to dismiss plaintiffs, victims of these fraud, as a consequence of the Lamp versus Gilbertson decision, which the Court determined retroactively. So there are literally tens of thousands—23,000 victims—in cases like this if this Congress fails to act and to correct the manifest injustice of the Lamp versus Gilbertson case.

We have also been informed by general counsel of the FDIC and also by the Resolution Trust Corporation people that the cost of the bailout, the money that we are being asked to appropriate in this Congress for the bank failures and the savings and loan failures will be greatly increased if Lamp versus Gilbertson is not modified. Here is such a case in which the Resolution Trust Corporation becomes the successor to Columbia Savings and Loan and is bringing an action against Mr. Milken to recover as a consequence of some of the fraudulent activity alleged to have been committed by Mr. Milken. So not only the $70 billion for bank insurance recapitalization and $80 billion more for the savings and loan, but there may be even more money asked if we take no action.

Mr. President, the Banking Committee did the responsible thing. S. 543 has a provision which modifies the decision in the Lamp case and it says, in effect, that a new standard is set prospectively, a 2-year statute of limitations from the time of the discovery of fraud or a 5-year outside bar, whichever shall occur first. And with respect to all of these thousands of cases that are pending, victims of fraud, what the amendment that we are asking and is incorporated in the banking legislation that we are debating says is, look, if those cases were filed in a timely fashion in the State or jurisdiction in which they were filed at the time they were filed, those cases then may go forward and those victims will simply have the opportunity to appear in court to seek justice.

No one, to my knowledge, has come forward on the floor of the Senate to say, "Look, we are opposed to modifying the decision in the Lamp case," but there is a strategy, and the strategy is to say, no, we cannot do that; we cannot do that because we have to consider tort reform.

Mr. President, I am not suggesting that there may not be some very worthy changes that we ought to consider in the context of our legal system. I do not advocate or suggest it is perfect. But, clearly, this is a thinly veiled attempt to, in effect, defeat the modification of the Lamp versus Gilbertson decision and to deprive those tens of thousands of people their day in court. If any of our colleagues think we are not going to be hearing from those people because motions are pending in many cases, which will undoubtedly be granted, many of them will be on Capitol Hill tomorrow to offer testimony in a hearing in the other body, so we are certainly going to hear from them.

This notion that we cannot act upon Lamp versus Gilbertson until we consider tort reform is a strategy, in my judgment, the effect of which is very clear, and that is to frustrate Lamp versus Gilbertson. We have had no hearing on any of the proposed tort reform measures, and, indeed, the administration has indicated they will send a package up to us next year. We ought to take a look at that. I express no opinion as to whether those provisions have merit or not. I do not know what they are. But I think nobody ought to leave this session of the Congress, without fully comprehending the consequences of our decision. If we fail to act, we are guilty of nonfeasance, and that nonfeasance will be a consequence visited upon tens of thousands of these victims and the American taxpayer.

All the speeches that we all like to make about what a tragic thing it is to have to come up with $70 billion for the banks, another $80 billion for the savings and loans will ring hollow, Mr. President, if we do not do what we can and what we ought to do in the cause of justice and fairness to those victims of fraud who simply seek an opportunity to be heard in court and to protect the American taxpayer from further exposure by additional losses as a result of failure to bring these actions.

I hope, Mr. President, that we can move forward on the banking legislation which is before us. It is part of S. 543.

I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, I ask unanimous consent to speak for 10 minutes in morning business.

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

Mr. GRAHAM. Thank you, Mr. President.

HOUSING CONSTRUCTION

Mr. GRAHAM. Mr. President, we have received this morning the latest monthly report on housing construction. That report is for October. Housing construction increased by 7.3 percent. That is good news. It is also good news that applications for permits to build new homes, a sign of future activity, also rose by 5.4 percent. Those pieces of good news contribute to a revised annual estimate of housing construction in America for 1991 of 1.1 million units. That is the immediate good news.

Mr. President, that good news is in a larger context of a sharp decline in the construction of homes for American families. The year 1991 could well be the lowest year in terms of new home construction since the late 1940's, for a period of almost 40 years since we have seen the level of construction of housing for American families at the level that it is today.

Mr. President, the current state of housing in America did not happen by accident. It was the result of a conscious, consistent, sustained series of policy initiatives toward a common goal. That was a goal of the Reagan-Bush administration which was announced, enunciated, and acted upon. That goal was to reduce the amount of housing capital, to reduce the amount of total investment in housing for Americans.

It was the policy of the Reagan-Bush administration to release capital that we have been spending to house Americans for use in other areas of the economy. It is clear that Americans are the best-housed people in the world. To anyone who has seen the conditions of housing of even other industrialized nations which exceed or approximate America's level of individual prosperity, it is clear that we as a nation have placed a higher emphasis on housing for our people than have other societies.

Mr. President, I for one believe that has been appropriate and a part of the American tradition, appropriate because America has understood that one of the ways that you build democracy is by making all Americans stockholders in democracy. And the key stock that most American families hold in this democratic system is ownership of their own home. That has given a stability and a sense of personal involvement unique to the American society.

It was at that basic American tradition the Reagan-Bush administration launched in 1981 a series of initiatives which have now brought us to the point of the lowest level of construction activity since the end of World War II. Mr. President, the consequence of their policy has affected all areas of housing, but nowhere more than for housing for middle Americans, the American of moderate income. Housing for that sector of our American population has been declining over the past 15 years.

Low levels of apartment construction and continued inventory losses assure that the nonsubsidized, the nonpublic rental market will continue to tighten. We are not constructing enough housing for moderate-income Americans, Mr. President, to meet the needs of increasing numbers of family formations, and the eliminations from our inventory.

So we are going to see a further tightening of housing for moderate-income Americans. We are going to see more need for that young married couple to live with their parents. We are going to see it increasingly more difficult for that young couple to be able to afford the starter home that will commence their own period of home ownership.

Mr. President, at the conclusion of my remarks, I would like to submit statistical data which underscores the severity of decline in residential housing activity and its impact on the American people.

The PRESIDING OFFICER (Mr. ROBB). Without objection, it is so ordered.

(See exhibit 1.)

Mr. GRAHAM. Mr. President, if I could just use as one example of the documents that will be included in the RECORD, what is happening in my own State of Florida.

In 1987 in Florida we had 193,000 housing starts; 131,000 single family, 62,000 multifamily. This year it is forecast that from that 193,000 just 5 years ago, we will be down to 106,000 starts. And in the area of multifamily, which is the sector that most meets the needs of the young family, the moderate low-income American families, the number of housing starts of multifamily in Florida will drop from 62,000 in 1987 to 23,000 in 1991.

Mr. President, those statistics underscore the severity of the problem.

I stated that this was not an accident, that it was a conscious set of initiatives that have brought us to this point. What were some of those initiatives? One was a pattern of studied actions to bring the fundamental financing mechanism for low- and moderate-income housing, which was an American thrift industry, to its knees. The current decline of the savings and loan industry was a matter of combined indifferent and conscious policies that were intended to reduce the relative importance of S&L's among financial institutions in America.

It is interesting, Mr. President, to go back almost 10 years ago and see at the beginning of the Reagan-Bush administration what was being said about the state of the savings and loan industry.

In March 1982, Richard Pratt, then the Chairman of the Federal Home Loan Bank Board, the agency responsible for the regulation and insurance function of the savings and loan industry, testified before the House Banking Committee. He was commenting on the Reagan-Bush administration's proposals to deregulate and expand the powers of savings and loans. Mr. Pratt stated:

> Objections to our powers proposal generally are couched in terms of its supposedly adverse impact on housing, or rest on the assertion that restructuring is a long-run problem that can wait for a solution. Regarding housing, we do not believe providing commercial lending authority to S&Ls will signal any significant abandonment of home-finance. * * * To the contrary, we believe they would employ commercial lending essentially as a vehicle to maintain their ability to continue as housing lenders.

Mr. President, that was not the only statement made by the Reagan-Bush administration. On February 23, 1988, the then-Secretary of the Treasury, Mr. Donald Regan, testified before a congressional committee to the effect that he disagreed with a recently published Brookings Institution study which had predicted—this is in February 1982—that there would be more than 1,000 savings and loans which would merge or would go into bankruptcy, and that the losses of those would be in excess of $9 billion.

That was the prediction of the Brookings Institution for the year 1983. The Secretary of the Treasury, Donald Regan, disagreed with that study and countered that the administration's policies would benefit the savings and loans. He rejected suggestions that the administration prepare a standby plan to aid the savings and loans. This would be unnecessary, he said, because the administration had been working to ensure that the industry's problems were being addressed.

Mr. President, a second part of the policy that has led to the decline of the housing industry is the consistent mismanagement of the Department most responsible for Federal housing policy, the Department of Housing and Urban Development.

We are all aware of the scandalous behavior which occurred in that Department over an 8-year period. Some of the most egregious examples of indifference, egregious examples of misuse of public faith, egregious examples of administrative incompetence, egregious examples of ineffective oversight or lack of concern for the inappropriate activities that took place in the Department of Housing and Urban Development during the Reagan-Bush administration.

The results of those were manifest. They included massive losses, particularly in FHA's financing of multifamily housing and insurance of multifamily mortgages. Freddie Mac suffered significant losses in multifamily areas. The result of this has been a virtual withdrawal of the Federal Government from the multifamily housing market and the significant declines in the current construction level of multifamily housing.

Also, many other HUD programs have been withdrawn as a result of the incompetence of the 1980's. Those included programs which were designed to maintain our stock of housing for low- and moderate-income housing.

The current Secretary, Mr. Jack Kemp, has admitted that the scandals were perhaps a "blessing in disguise," to use his term, and they allowed him to clear the decks of programs that the Republican administration never liked in the first place, but were unable to discharge by congressional actions; now they have been discharged, because they were discredited by administrative actions.

A third area, Mr. President, in which the Reagan-Bush administration participated, activities which have brought residential housing to its current sad state, was in the advocacy of tax law changes. The Joint Center for Housing Studies at Harvard has stated that "The decreases in marginal income tax rates and the increases in the capital gains tax rate under the 1986 Tax Act significantly lowered the after-tax return on rental housing." They continued by saying, "perhaps the most significant blow to real estate investment under tax reform was the provision that says 'passive' investors in rental housing could no longer offset ordinary income with losses from real estate investments. For many investors, this provision substantially eliminated the tax benefits of investing in rental housing."

The Tax Reform Act changes primarily affected the rental housing market, and significantly affected multifamily housing markets. Multifamily housing starts have decreased sharply since 1986 from over 500,000 starts in that year to just over 300,000 starts in 1990.

Again, the policy of the Reagan-Bush administration was to remove those tax areas that had created a stimulus to private investment in residential housing. The removal of those incentives have now contributed substantially to the current low state of residential housing construction since the end of World War II.

Finally, Mr. President, the actions taken in the last 2 years relative to the financial services industry have had a significant adverse effect on housing. One of the items that I believe has been inappropriately misunderstood has been the fact that not only do we need to have the financing for the purchase of homes, where there has been a significant reduction in mortgage rates, but it is also critical that there be financing available for the production of housing, for the construction of homes, so they will be able for a family to purchase.

In recent actions, they have had a serious adverse effect on the capacity of the housing industry to secure capital for the production of housing. Acquisition, development, and construction loans represent a core component of housing finance.

The Joint Center for Housing study on multifamily housing reports that under recent savings and loan and bank legislation, risk-based capital requirements and a single-borrower loan limitation have restricted production lending by thrifts. Salomon Brothers calculates that based upon the new capital requirements, fewer than 40 thrifts nationwide have the capital to make even a $20 million construction loan.

Mr. President, the capital standards that have been adopted in the savings and loan legislation and, to an extent, are proposed to be continued in the banking bill that we will return to later today, are largely a result of the negotiation between the Reagan-Bush administration and other industrialized nations' on setting common capital standards for financial institutions. These are commonly referred to as the Basel Convention.

One of the realities of that convention is that most of the other nations which participated did not have a substantial private housing sector. Most of their housing is through public agencies. Even in a country such as Great Britain, a much higher percentage of its housing is in the public sector than is true in the United States. Therefore, the Basel Convention, in my judgment, was not sensitive to the needs of an economy which relies primarily on private sector financing for its housing; and by carrying forward standards that may be appropriate to other nations to the United States, we have contributed to a substantial tightening of the availability of credit for the production of housing.

Mr. President, my conclusion is that the circumstance that we have arrived at today, the lowest level of housing construction in 40 years, is not a matter of accident or happenstance. It was as a result of a conscious policy goal of reducing the level of American investment in housing and carried out through a series of initiatives from a decline of the basic financing institution for housing, the savings and loan industry, to mismanagement of the Department of Housing and Urban Development, to tax law changes, and to changes in the standards regulation of our financial institutions, which were particularly inappropriate and adverse in their consequences as they related to residential housing.

Mr. President, I believe that it is critical that this Congress take a strong position to recognize that housing is going to be a key, not only to the long-term maintenance of important American values, but also will be a key to our immediate recovery from this current economic slump.

I urge that this Congress, before we complete our action, at least indicate the direction that we intend to take in terms of restoring a level of housing construction in America that will meet the needs of our people, will put hundreds of thousands of people back to work, and will be a significant stimulus toward economic recovery. Thank you, Mr. President.

EXHIBIT 1.—FLORIDA HOUSING STARTS

[In thousands of dollars]

	Total	Single family	Multi-family
1987	193.5	131.2	62.3
1988	180.5	127.0	53.5
1989	157.8	107.3	50.8
1990	129.1	89.6	40.0
Forecast 1991	106.6	83.5	23.1
Percent change:			
1987–88	−6.7	−3.2	−14.1
1988–89	−12.6	−15.5	−5.0
1989–90	−18.2	−16.5	−21.3
1990–91	−17.4	−6.8	−42.3

NATIONAL ECONOMIC DATA

	Industrial production (1987=100)			Capacity utility (percent)	Employment (000)			Unemployment rates (percent)		Composite indicators	
	Manufacturing total	Construction supplies	Home goods	Manufacturing total	Civilian workers	Nonagricultural workers	Construction	Civilian workers	Construction	Leading	Coincident to lagging
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1979	80.9	88.5	89.8	85.4	98,824	89,823	4,463	5.8	10.1	103.6	107.8
1980	78.8	80.8	85.1	80.2	99,303	90,406	4,346	7.1	14.1	99.2	101.6
1981	80.3	78.4	86.3	78.8	100,397	91,156	4,188	7.6	15.6	101.2	104.4
1982	76.6	72.2	78.1	72.8	99,526	89,566	3,905	9.7	20.0	100.0	100.0
1983	80.9	80.2	86.2	74.9	100,834	90,200	3,948	9.6	18.4	116.2	111.5
1984	89.3	86.2	94.6	80.4	105,005	94,496	4,383	7.5	14.3	121.7	111.6
1985	91.6	89.1	90.6	79.5	107,150	97,519	4,673	7.2	13.1	124.1	108.2
1986	94.3	93.8	93.9	79.0	109,597	99,525	4,816	7.0	13.1	132.1	106.8
1987	100.0	100.0	100.0	81.4	112,440	102,200	4,967	6.2	11.6	140.0	111.5
1988	105.8	104.4	104.1	83.9	114,968	105,536	5,110	5.5	10.6	142.7	113.8
1989	108.9	106.1	108.7	83.9	117,342	108,413	5,200	5.3	10.0	144.9	112.1
1990	109.9	105.2	109.3	82.3	117,914	110,323	5,205	5.5	11.1	143.9	111.9
Seasonally adjusted:											
1988:											
September	106.7	104.4	104.4	84.2	115,394	106,207	5,163	5.4	9.5	143.6	113.9
October	107.1	104.7	105.9	84.3	115,671	106,475	5,162	5.3	10.0	143.9	115.0
November	107.8	104.8	106.7	84.6	116,063	106,824	5,191	5.3	10.5	144.1	113.4
December	108.3	105.9	106.6	84.8	116,181	107,097	5,213	5.3	10.1	145.0	114.0
1989:											
January	108.9	106.8	107.5	85.1	116,708	107,442	5,267	5.4	10.3	145.9	113.9
February	108.3	104.6	107.7	84.4	116,800	107,711	5,270	5.2	10.3	145.6	113.2
March	108.7	105.5	108.0	84.5	117,002	107,888	5,252	5.1	9.6	144.8	112.4
April	109.4	106.3	110.0	84.8	117,089	108,101	5,279	5.2	9.7	145.7	113.6
May	109.2	105.9	109.3	84.5	117,065	108,310	5,283	5.2	9.4	144.4	112.0
June	109.3	106.2	109.8	84.4	117,400	108,607	5,283	5.4	10.1	144.2	111.6
July	108.7	106.5	109.2	83.6	117,413	108,767	5,314	5.3	10.6	144.1	111.2
August	109.1	105.5	107.9	83.8	117,565	108,887	5,321	5.2	10.2	144.9	111.9
September	109.1	105.2	109.8	83.6	117,417	109,096	5,325	5.3	10.3	144.9	111.8
October	108.4	106.3	109.8	82.9	117,619	108,980	5,239	5.3	9.1	144.4	110.9
November	108.9	107.0	108.4	83.0	117,920	109,425	5,258	5.3	9.6	144.6	111.4
December	108.8	107.4	108.6	82.8	117,957	109,383	5,216	5.3	9.6	145.3	111.8
1990:											
January	108.1	107.9	110.6	82.0	117,945	109,654	5,294	5.3	9.4	145.4	111.5
February	109.6	108.2	111.6	83.0	118,074	109,958	5,368	5.3	9.2	144.1	112.8
March	109.8	107.3	112.0	82.9	118,235	110,122	5,313	5.3	10.0	145.4	112.8
April	109.5	106.4	111.2	82.5	118,090	110,177	5,256	5.4	10.5	145.2	112.0
May	110.3	105.5	111.1	82.8	118,277	110,304	5,203	5.3	11.3	146.0	112.8
June	110.8	106.0	112.0	83.0	118,237	110,435	5,182	5.3	9.8	146.2	113.6
July	111.1	106.7	109.5	83.0	117,882	110,269	5,245	5.5	10.5	146.2	112.9
August	111.1	105.3	109.6	82.9	117,690	110,160	5,111	5.6	11.2	144.4	113.2
September	111.2	103.8	109.3	82.8	117,883	110,113	5,088	5.7	12.0	143.2	112.3
October	110.7	103.1	106.8	82.2	117,733	110,432	5,093	5.7	13.0	141.5	111.1
November	108.9	101.8	104.1	80.7	117,386	110,165	5,029	5.9	13.3	139.7	110.1
December	107.5	101.0	103.4	79.4	117,574	110,004	4,983	6.1	14.0	139.4	108.6
1991:											
January	107.0	97.7	103.2	78.9	116,922	109,418	4,797	6.2	14.5	138.7	106.3
February	106.1	96.4	100.7	78.0	116,918	109,160	4,792	6.5	15.5	140.2	106.1
March	105.2	94.0	101.4	77.2	116,754	108,902	4,720	6.8	14.1	141.3	105.8
April	105.9	94.9	103.4	77.5	117,398	108,736	4,688	6.6	15.0	141.8	107.5
May	106.6	95.8	104.1	77.8	116,591	108,887	4,715	6.9	14.7	142.9	109.6
June	107.5	97.4	107.3	78.3	116,884	108,885	4,710	7.0	15.6	143.7	112.0
July	108.3	97.1	108.3	78.7	116,712	108,859	4,695	6.8	16.7	145.6	112.5
August	108.3	97.7	108.3	78.5	116,416	108,936	4,691	6.8	15.1	145.4	113.3
September	108.8	98.2	109.4	78.7	117,165	108,960	4,685	6.7	15.7	NA	NA

Note.—(4) Percent of manufacturing capacity used. (5) All civilian workers (excludes the armed forces). (6), (7) Data based on establishment records compiled from an establishment survey designed to provide industry information on nonagricultural payroll employment. Data excludes proprietors, the self-employed, unpaid volunteer or family workers, farm and domestic workers. (5), (8), (9) Data based on household interviews obtained from a survey of the population 16 years of age and over. (10) The composite index of 11 economic time series is a summary measure designed to signal future changes in the direction of aggregate economic activity; 1982=100. (11) Ratio of coincident to lagging indicators, which is, in itself, a leading indicator; 1982=100. NA—Not available.

Sources: (1), (2), (3), (4) Federal Reserve Board, Statistical Release, G.17; (5), (6), (7), (8), (9) Bureau of Labor Statistics, The Employment Situation; (10), (11) Bureau of Economic Analysis.

NEW PRIVATELY OWNED HOUSING UNITS STARTED

[Thousands of units]

	U.S. total	1 unit	2–4 units	5 plus units	Multifamily	Northeast	Midwest	South	West
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1979	1,745	1,194	122	429	551	178	349	748	470
1980	1,292	852	109	330	440	125	218	643	306
1981	1,084	705	91	288	379	117	165	562	240
1982	1,062	663	80	320	400	117	149	591	205
1983	1,703	1,068	113	522	635	168	218	935	382
1984	1,749	1,084	121	544	665	204	243	866	436
1985	1,742	1,072	93	576	669	252	240	782	468
1986	1,806	1,179	84	542	625	293	295	733	483
1987	1,621	1,146	65	409	474	269	298	634	420
1988	1,488	1,081	59	348	407	235	274	575	404
1989	1,376	1,003	55	318	373	178	266	536	396
1990	1,193	895	38	260	298	131	253	479	329
Seasonally adjusted annual rate:									
1987:									
September	1,695	1,232	49	414	463	263	310	706	416
October	1,515	1,090	64	361	425	264	248	612	391
November	1,656	1,112	52	492	544	263	333	639	421
December	1,400	1,034	51	315	366	234	269	577	320
1988:									
January	1,271	924	49	298	347	263	205	437	366
February	1,473	1,070	59	344	403	278	253	580	362
March	1,532	1,177	62	293	355	294	247	580	411
April	1,573	1,072	55	446	501	255	327	602	389
May	1,421	1,020	55	346	401	205	275	570	371
June	1,478	1,106	58	314	372	249	268	576	385
July	1,467	1,061	53	353	406	255	283	562	367
August	1,493	1,109	60	324	384	230	251	580	432
September	1,492	1,044	63	385	448	216	263	591	422
October	1,522	1,139	59	324	383	192	270	585	475
November	1,569	1,141	68	360	428	211	274	624	460
December	1,563	1,131	62	370	432	214	343	597	409
1989:									
January	1,572	1,110	64	398	462	256	292	606	418
February	1,423	997	63	363	426	212	261	559	391
March	1,398	971	53	374	427	164	297	549	388
April	1,344	1,031	59	254	313	207	262	533	342
May	1,317	987	45	285	330	175	245	520	377
June	1,420	978	53	389	442	173	243	544	460
July	1,431	1,034	59	338	397	195	283	526	427
August	1,339	1,008	55	276	331	142	238	573	386
September	1,275	966	55	254	309	166	248	494	367
October	1,435	1,034	62	339	401	168	286	576	403
November	1,353	1,020	47	286	383	172	301	506	374
December	1,267	928	52	287	339	142	264	436	425
1990:									
January	1,543	1,078	53	412	465	158	364	522	499
February	1,459	1,127	41	291	332	221	285	572	381
March	1,298	988	35	275	310	138	276	520	364
April	1,217	901	51	265	316	124	283	467	343
May	1,206	897	38	273	311	128	255	486	339
June	1,187	890	41	256	297	114	241	532	300
July	1,155	876	31	248	279	115	226	492	322
August	1,131	835	30	266	296	122	240	434	335
September	1,106	858	35	213	248	104	239	445	318
October	1,026	839	22	165	187	144	230	392	260
November	1,130	769	54	307	361	147	232	483	268
December	971	751	17	203	220	110	233	395	233
1991:									
January	847	648	29	170	199	86	167	361	233
February	992	768	37	167	204	91	301	384	216
March	907	742	28	137	165	104	226	390	187
April	977	801	32	144	176	93	236	395	253
May	983	831	36	116	152	114	216	367	286
June	1,034	869	24	141	165	145	244	393	252
July	1,049	879	46	124	170	104	230	441	274
August	1,056	886	41	129	170	115	246	426	269
September	1,033	868	38	127	165	111	235	433	254

Source: U.S. Bureau of the Census, construction reports, series C–20, housing starts.

NEW PRIVATELY OWNED HOUSING UNITS AUTHORIZED IN PERMIT-ISSUING PLACES

[Thousands of units]

	U.S. total	1 unit	2–4 units	5 plus units	Multifamily	Northeast	Midwest	South	West
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1979	1,552	982	125	445	570	167	289	628	468
1980	1,191	710	115	366	481	118	192	562	319
1981	986	564	102	319	421	110	133	491	251
1982	1,000	546	88	366	454	107	126	543	224
1983	1,605	902	133	570	703	164	188	863	390
1984	1,682	922	143	616	757	201	212	812	457
1985	1,733	957	120	657	777	260	237	753	484
1986	1,769	1,078	108	584	692	283	290	686	510
1987	1,535	1,024	89	421	510	272	282	575	406
1988	1,456	994	76	386	462	230	266	544	416
1989	1,338	932	67	340	407	179	252	505	402
1990	1,111	794	54	263	317	126	234	426	325
Seasonally adjusted annual rate									
1987:									
September	1,514	989	85	440	525	248	284	577	405
October	1,447	960	78	409	487	244	279	554	370
November	1,457	973	83	401	484	270	267	542	378
December	1,345	950	81	314	395	254	232	479	380
1988:									
January	1,244	899	68	277	345	255	221	422	346
February	1,438	991	73	374	447	248	256	568	366
March	1,525	1,039	84	402	486	298	277	551	399
April	1,429	952	73	404	477	244	268	518	399
May	1,444	988	76	380	456	241	268	533	402
June	1,485	1,009	77	399	476	235	278	564	408

NEW PRIVATELY OWNED HOUSING UNITS AUTHORIZED IN PERMIT-ISSUING PLACES—Continued

[Thousands of units]

	U.S. total	1 unit	2–4 units	5 plus units	Multifamily	Northeast	Midwest	South	West
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
July	1,439	980	75	384	459	229	257	552	401
August	1,460	1,002	70	388	458	216	248	556	440
September	1,436	975	74	387	461	190	259	542	445
October	1,516	1,023	82	411	493	218	260	568	470
November	1,508	1,018	76	414	490	199	249	575	485
December	1,501	1,050	75	376	451	201	347	545	408
1989:									
January	1,466	1,040	71	355	426	234	280	556	396
February	1,383	943	82	358	440	198	268	518	399
March	1,214	860	67	287	354	178	243	441	352
April	1,376	948	67	361	428	202	253	525	396
May	1,381	910	72	399	471	175	250	536	420
June	1,322	882	64	376	440	176	241	507	398
July	1,283	913	67	303	370	165	234	483	401
August	1,334	935	70	329	399	179	261	514	380
September	1,314	948	62	304	366	171	248	504	391
October	1,365	953	61	351	412	167	277	500	421
November	1,344	986	64	294	358	169	269	489	417
December	1,422	983	63	376	439	169	233	526	496
1990:									
January	1,758	998	84	676	760	194	480	655	429
February	1,343	978	62	303	365	187	284	459	413
March	1,205	884	55	266	321	142	244	445	374
April	1,123	816	57	250	307	123	237	422	341
May	1,088	808	51	229	280	126	222	416	324
June	1,123	801	49	273	322	124	229	425	345
July	1,086	781	58	247	305	115	228	421	322
August	1,055	756	61	238	299	114	221	405	315
September	989	730	48	211	259	111	218	385	275
October	925	703	44	178	222	114	194	360	257
November	916	668	42	206	248	108	194	366	248
December	854	645	44	165	209	90	181	338	236
1991:									
January	802	611	40	151	191	96	188	306	212
February	876	695	44	137	181	99	205	353	219
March	892	689	45	158	203	96	204	340	252
April	913	742	45	126	171	102	210	361	240
May	966	760	41	165	206	105	221	379	261
June	999	780	54	165	219	115	227	391	266
July	1,005	794	42	169	211	116	235	400	254
August	953	769	45	138	184	117	223	372	241
September	979	780	51	148	199	110	221	401	247

Note.—Monthly and annual data through 1983 are based on 16,000 permit-issuing places; data from 1984 to the present are based on 17,000 permit-issuing places.

Source: U.S. Bureau of the Census, construction reports, series C–20, housing starts.

HEALTH-CARE COST CONTAINMENT

Mr. PRESSLER. Mr. President, yesterday the Senate Select Committee on Aging and the Committee on Governmental Affairs conducted a hearing to examine the health-care costs of France, Germany, and Japan. The hearing was most informative.

The General Accounting Office recently conducted a study on health-care expenditures. The report indicates that the United States spends 11.8 percent of its gross domestic product [GDP] on health care. Germany spends 8.2 percent, Japan 7 percent, and France 8.5 percent of their respective GDP.

Health-care and health-insurance costs are touching every socioeconomic segment of our society. The poor, the middle class, the young and old are struggling to secure affordable health care.

In my home State of South Dakota there are an estimated 56,000 uninsured individuals, most of whom are under the age of 24. There are 108,000 senior citizens dependent upon Medicare to pay their medical bills. These two groups equal nearly one-fourth of South Dakota's population. Many farm families are being forced to cancel health insurance due to skyrocketing premiums. Many middle-class families have had to increase medical deductibles to $3,000, $4,000, and $5,000. Some young parents don't obtain basic health care for their children because the cost is too prohibitive. No one is able to escape this problem.

We each have participated in hearings dealing with health-care costs. When returning to our home States we have listened to people discuss health care in the workplace, at the local coffee shop, and at public meetings. The concerns are not new.

While we have struggled with this issue in recent months the cost of health care has continued to escalate. While we have studied the reasons why health care is becoming increasingly expensive many individuals have been forced to reject needed health care.

I have concluded that there is no easy answer to solving our health-care crisis. We need to address the issues of cost containment, insurance reform, malpractice reform, and the availability of health care in areas. Any solution would involve sacrifice. This may be on the part of the individual, their employer or the Federal Government. The key is that we need to proceed in a cost-effective manner.

The General Accounting Office [GAO] report we are looking at today points out one thing. Other industrialized nations have found more cost-effective methods of delivery of health care.

All agree that the quality of care and the advanced medical technology of the United States is the best in the world. We need to congratulate our medical community for its great technology. However, we need to improve the delivery of health care.

We should try to apply the best attributes of other nations' health-care systems to our own, while being careful to avoid making the mistakes that have created serious problems in the medical systems of other countries.

THE NATIONAL CHILD PROTECTION ACT OF 1991

Mr. KASTEN. Mr. President, earlier this summer I introduced the strategy to eliminate crime in the urban and rural environment, or SECURE, crime bill. One of the provisions of that bill was to establish a National Child Abuse Registry through the National Crime Information Center [NCIC]. This provision, as passed by the Senate, would establish a national system that contains current, accurate information on people who have committed crimes of child abuse. Each State child abuser repository would be required to maintain close liaison with the national center for the purpose of exchanging information.

Last week the Senate Judiciary Committee, under the guidance of Senators THURMOND and BIDEN, held hearings on child abuse and the protection that our children need. I commend the Judiciary Committee's follow-up to Senator MCCONNELL'S exploratory work in this area.

I am happy to see that we are actually moving forward on this crucial

issue. I would like to take this opportunity to commend a Milwaukee native, Ms. Oprah Winfrey, whose courage in coming forward and presenting her tragic story of abuse has helped to spearhead the efforts we are making to protect every child—everywhere. Her proposal would expand upon the concept found in my SECURE proposal and the Senate-passed provisions. It would establish criteria and procedures under which States would permit child care organizations, not just law enforcement, to obtain the benefits of nationwide criminal background checks.

The bill would also provide protection for those persons subjected to background checks in cases where the information found is inaccurate. I am, therefore, pleased to be an original cosponsor of the National Child Protection Act of 1991.

I understand Ms. Winfrey will be traveling back to Capitol Hill in a few weeks and I intend to help her garner the attention, and the support, which this important measure deserves.

No American child should be saddled with the unconscionable handicap of starting life as an abused child. Let us get to work on giving our kids a truly abuse-free environment throughout their formative years and beyond.

COMPREHENSIVE HEALTH CARE

Mr. PRESSLER. Mr. President, let me commend Senator CHAFEE for the fine leadership he has demonstrated in recent months while many of us studied our health-care problems, drafted, and introduced comprehensive health-care legislation. It has not been easy to draft a proposal to meet the needs of all Americans. However, this bill is a positive step toward achieving this goal.

This is not a panacea to cure all our health-care problems. However, it is a step in the right direction. It is a solid foundation for developing a solution to our health-care crisis.

In my home State of South Dakota there are an estimated 56,000 uninsured individuals, the majority of whom are below the age of 24. Nearly 108,000 other South Dakotans are dependent upon Medicare to pay their health-care bills. Combined, these two groups represent almost one-fourth of my State's population. Rural South Dakota communities are struggling to recruit and retain medical professionals. Hospitals are closing due to high costs and excessive Federal regulation. The bottom line is that many in South Dakota no longer can afford health care. Insurance rates and health-care costs affect more than just low-income people. The health-care crisis has touched dual income families, the middle class and senior citizens. We need to respond to these needs.

The key components of health-care reform must include cost containment, malpractice reform, health-insurance reform, and improving medical access in rural areas. This legislative package, although not perfect, is a good start in the right direction.

This bill does not impose additional Federal mandates on South Dakota businesses. Rather, it utilizes tax credits to encourage businesses to provide health-care insurance to their employees.

This bill would assist low-income people by expanding Medicare to include individuals who fall below 200 percent of the Federal poverty rate.

This legislative package emphasizes preventive health care. It does this by giving a tax credit to families that obtain qualified preventive care.

Most important this legislative package recognizes the unique problems that rural America faces in providing health care. This bill increases funding for the Essential Access Community Hospital Program, Medicare Rural Health Care Transition Programs, and other crucial programs.

We have the best medical technology in the world. We must build on that base to provide a better delivery system.

TIME FOR A NOVEMBER SURPRISE

Mr. DOLE. Mr. President, nearly 6 months ago, I suggested that the time had come for Iran-Contra Prosecutor Lawrence Walsh to close the doors on his lavish suite of taxpayer-funded offices and end his investigation.

Mr. Walsh, however, chose to press on. But after the events of last week, surely it must even have occurred to Mr. Walsh that it is time to pull the plug.

The court of appeals reversed John Poindexter's guilty verdict, as they, and the Supreme Court, did to Oliver North's conviction. As the Wall Street Journal points out in an editorial today, Mr. Walsh's batting average in major cases reviewed by the courts stands at zero.

Mr. President, closing the doors on this lavish waste of money would be the November surprise that the American taxpayers have been waiting for.

That does not mean you do not pursue some of these cases, I would add. We do have the Justice Department. I think there are objective men and women in the Justice Department who can pursue inappropriate activity, criminal or otherwise. The point is we do not need a special prosecutor. The cost of that office has been estimated at between $30 and $50 million to the American taxpayers.

Mr. President, I ask unanimous consent that today's Wall Street Journal editorial and an editorial from today's Washington Times be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Nov. 20, 1991]

MR. WALSH KEEPS ON TRUCKING

Back in the 1960s, anti-war activists used to ask the question: What if they declared a war and nobody showed up to fight? That query suggests another: What if they held an inquisition and nobody got convicted? Lawrence Walsh, independent counsel for the Iran-Contra investigation, ought to be made to answer it.

Last week a three-member panel of federal appeals court judges reversed the conviction of former Reagan National Security Adviser John M. Poindexter on the grounds that his legal rights had been violated. Adm. Poindexter was perhaps the biggest pigeon that Mr. Walsh's snares had trapped, and now even he has slipped the toils. Last year, former Lt. Col. Oliver North, who also had been caught by Mr. Walsh's traps, also slipped them when the court gutted his conviction, and Col. North later won a dismissal of all charges against him. Mr. Walsh now has to return home almost empty-handed. It's true he has the conviction of Elliott Abrams, also an Iran-Contra principal, but the same day that Adm. Poindexter was freed, Abrams received his sentence: two years' probation and a $50 fine. If Mr. Walsh had prosecuted Mr. Abrams for not paying his parking tickets, the results would have been more consequential.

The excuse Mr. Walsh and his dwindling band of supporters use is that Congress tied his hands when it granted immunity to Col. North and Adm. Poindexter. That means the prosecutors can't use as evidence in court the information the Iran-Contra congressional investigation dug out of these witnesses. Except the prosecutors did use it in the trial, which is why the appeals courts reversed their sentences. Except also that this happens to be the way in which the American judicial system works and has always worked.

It is commonplace among prosecutors to induce a conspirator to squeal on his accomplices by arranging for immunity or a lighter sentence for the squealer. That doesn't seem to impede competent prosecutors who really have to confront real crimes and real criminals. It does seem to inconvenience Mr. Walsh and his merry band, and it suggests that, in the Iran-Contra matter, maybe there's not much for said accomplices to squeal about, not many criminals to convict and, in sum, not much to prosecute. In other words, there's really not much for Mr. Walsh to do and not much reason for his office to continue in being.

Moreover, Mr. Walsh told Congress back in 1987 that granting immunity might constrain his ability to get convictions, and Congress, whether from legitimate interest in uncovering what happened in Iran-Contra or just out of its own morbid political curiosity, chose to grant immunity anyway. That too is part of the legitimate judicial process. There's no reason to think that, had Congress not done so, Mr. Walsh could have unearthed the information he needed as a prosecutor to obtain convictions, and certainly he doesn't seem to have unearthed any other information that can make the convictions stand.

The Iran-Contra controversy has long since come to bore even the most sedulous antiquarians and now excites curiosity only among paleontologists. There was a protracted congressional investigation and a congressional report. There were trials and convictions, and now there are reversals of those convictions. There have been entire books written about Iran-Contra, and we are

almost at the stage where books will be written about the books. Soon the scandal will be the stuff of television documentaries, doctoral dissertations and other genres of psuedo-history.

The administration that began the secret funding of the Contras with money from Iranian arms sales has been out of office for three years, and in less than a year Americans will vote on the record of its successor. The Ayatollah Khomeini is cold in his grave, and the Sandinistas themselves are no longer in power. Still Mr. Walsh and his absurd office flourish, at exorbitant cost to taxpayers, to the distraction of citizens and to no useful purpose whatsoever. Will someone please shut him down?

[From the Wall Street Journal, Nov. 20, 1991]

SPECIAL PROSECUTORS

Most federal prosecutors win more than 90% of their cases, not counting the abusive RICO cases that juries abhor. Yet somehow no one is surprised that Lawrence Walsh rates 0% in the major cases reviewed so far by appeals judges.

Federal judges performed a hat trick on Mr. Walsh last week. They reversed John Poindexter's guilty verdict, gave Elliott Abrams a light tap as punishment and signaled that Mr. Walsh's latest case against a CIA official is also going down. Special Prosecutor Walsh needs to head back to Oklahoma before he gives kangaroo trials a bad name.

Federal appeals judges had no trouble liberating Mr. Poindexter, the pipe-smoking former National Security Council head who testified that the Iran-Contra buck stopped with him. As any prosecutor paid to exercise some discretion would have known, Mr. Walsh's case was flawed for the same reason his case against Oliver North was dismissed: Though both men received immunity for their forced congressional testimony, Mr. Walsh used this testimony against them in court, violating their constitutional rights.

Judge Douglas Ginsburg said that Mr. Walsh "had a full opportunity and every incentive" to prove there were no tainted witnesses, but couldn't. Along with everyone else in the country, his witnesses were glued to the televised hearings.

Judge Ginsburg also warned against prosecutors so desperate for scalps that they twist criminal laws to mean something they never said. The immunity issue aside, Judge Ginsburg said that the only conviction of Mr. Poindexter relating to the Contras was based on Mr. Walsh's unconstitutionally broad reading of law.

Mr. Poindexter was convicted of "corruptly" obstructing Congress by withholding information. Judge Ginsburg said no one knows what "corruptly" means here. "A penal statute must define the criminal offense with sufficient definiteness that ordinary people can understand what conduct it prohibits," he said. Even liberal Judge Abner Mikva, in his partial dissent, agreed that one of the counts "does sound very much like the political positioning that would stretch the statutory terms beyond constitutional limits."

The element of political vendetta that energized these prosecutions from the first may be one reason judges have decided that even Mr. Walsh's "victories" will have to be Pyrrhic. As Gordon Crovitz notes on the page opposite, Mr. Walsh put Elliott Abrams in the classic Catch-$2.2 million: Plead to something or spend millions defending yourself from my Budgetless Battalion. When Mr. Abrams agreed to a misdemeanor involving congressional testimony, Judge Aubrey Robinson could have sentenced him to years in jail and a huge fine. Instead, he sentenced Mr. Abrams to 100 hours of community service plus a token fine of $50.

A prediction: Mr. Walsh's next loss will be his case against former CIA official Clair George. Federal Judge Royce Lamberth granted Mr. George's request for voluminous classified documents that would be required for any trial. Recall that Mr. Walsh had to drop his case against another CIA official, Joseph Fernandez, because intelligence officers and judges agreed it was not worth divulging national-security secrets. Judge Lamberth, who dismissed some of Mr. Walsh's arguments as "simply disingenuous," hinted that here we go again.

"The court seeks to avoid reinventing the wheel," Judge Lamberth wrote, "and to identify as early as possible whether this case can go to trial or whether it will be dismissed as some prior Iran-Contra prosecutions have been."

What's the problem here? It's that these special prosecutors are totally unaccountable to anyone with prosecutorial discretion—and accountable only to partisans in Congress.

Some people have figured out a way to cast a ballot against abusive special prosecutors. They send funds to the targets to even the odds some against the tens of millions of taxpayer funds spent by Mr. Walsh. Lawyers seem to be particularly large donors. For John Poindexter, the address is: Poindexter Defense Fund, c/o Rear Adm. C.A. Hill Jr., 1322 Merrie Ridge Rd., McLean, VA 22101. For Elliott Abrams: Elliott Abrams Legal Defense Fund, c/o Franklin Abrams, Suite 5330, One Penn Plaza, New York, NY 10119.

Congress was happy with its monster creation so long as Mr. Walsh pinned something to get guilty-plea headlines about aides to Ronald Reagan. Now federal appeals judges are issuing the final legal judgments. Hyperpartisan liberals must live with the verdict that criminalizing policy differences doesn't work.

SALUTE TO SENATOR BYRD

Mr. DOLE. Mr. President, on behalf of all the Members on this side of the aisle, I rise this morning to extend our best wishes to the distinguished President pro tempore of the Senate, and chairman of the Appropriations Committee, Senator ROBERT C. BYRD of West Virginia.

This is the 33d birthday that our colleague has celebrated as a Member of the Senate. And in those 33 years, he has earned a reputation as a Senator who has made a difference for West Virginia and for America.

The Senator from West Virginia is, of course, the unofficial historian of this body. His knowledge of parliamentary procedure, and the traditions of the Senate are legendary.

And his two-volume history of the Senate stands as the most comprehensive work on this subject, and will be a valuable contribution to future U.S. Senators and scholars.

Mr. President, the senior Senator from West Virginia has not only written history, he has made it, as well.

With his election as President pro tempore in 1989, he gained the distinction of having held more Senate leadership positions than any other Senator in history.

To be exact, Senator BYRD has served as majority whip, majority leader, Democratic leader, and President pro tempore.

It is a record that I believe will stand forever, just as will his record of devotion to the Senate and to West Virginia.

OPPOSITION TO MURKOWSKI AMENDMENT TO STRIKE TITLE V FROM S. 543

Mr. SPECTER. Mr. President, I think it is important to state for the record my reasons for voting against the amendment offered yesterday by my colleague from Alaska, Senator MURKOWSKI, to strike title V from S. 543 because it is too broad. As you know Mr. President, title V of the banking bill contains provisions designed to protect consumers. These provisions include truth-in-savings provisions requiring lenders to disclose to consumers information concerning interest rates; fair lending enforcement provisions designed to combat mortgage lending discrimination; and the basic banking/Government check-cashing provisions, which have occupied the bulk of today's debate on this banking legislation.

I have reviewed this title and discussed the issues related thereto with colleagues and constituents. As a result, I have determined that I would vote against the check cashing provisions of the title V which I did yesterday on an amendment offered by Senator COCHRAN. However, given the importance of combating mortgage lending discrimination by, for instance, requiring lenders to provide rejected mortgage applicants with a copy of any appraisal performed at the applicant's expense and requiring regulators to report suspected credit discrimination to the Attorney General, and of requiring lender disclosure of basic information with regard to interest rates on deposit accounts, I cannot vote in favor of striking the entire title.

I regret that this provision will apply a regulatory burden to many banks which have impeccable records on the discriminatory issue, but the matter is so important in many geographical areas that it should be retained.

Mr. President, recently released mortgage lending studies indicate that the mortgage rejection rate for minorities is two to four times that of nonminorities. One study in particular found that upper-income minorities were rejected more often than low- and moderate-income nonminorities. I understand that the Banking Committee received similar loan discrimination studies and testimony. To the extent that any of these rejections are based on noncredit-related issues such as

race, I believe the fair lending provisions of title V of S. 543 are very positive and welcomed steps toward redressing such issues.

Similarly Mr. President, lenders, to their credit, as an effort to remain competitive offer a wide variety of accounts and services. To many consumers struggling to determine which of the alternative savings or investment options to choose, however, it is difficult to make informed comparisons of where to borrow or invest their money. The truth-in-savings provisions of title V will allow consumers to receive better information from depository institutions in order to make informed borrowing and investment decisions.

Again, it is a matter of balance as to what regulatory items are worth the burden; and, on a close call, I believe this one is.

On the other hand, I believe the check-cashing provisions are unduly burdensome in light of the fact that most banks already provide such services. My vote on the Cochran amendment reflects my revised thinking on this subject after I have studied this issue at some detail in the past several months.

I believe this is an appropriate balance on this issues of title V.

ROBERT H. ATWELL: HIGHER EDUCATION'S TOP LOBBYIST

Mr. KENNEDY. Mr. President, the Washington Post recently carried a profile of Robert H. Atwell, the president of the American Council on Education [ACE].

As all of the Members of this body know, postsecondary education in the United States is incredibly diverse. There are thousands of institutions, each with a slightly different set of interests and needs. While there are many interest groups representing various segments of the postsecondary education universe, there is only one organization—the American Council on Education—that represents all of these institutions.

Robert Atwell has been president of ACE for the last 7 years. By all accounts, this has been a turbulent time for higher education. Throughout this period, Mr. Atwell has provided steady, thoughtful leadership on a wide variety of complex issues—from athletics to college prices to increasing minority participation in higher education. The members of the Labor Committee have learned that Bob Atwell's insight and judgment on higher education issues are superb.

One area where I have benefited from Bob's leadership is on the issues surrounding college athletics. Even before he assumed the presidency at ACE, he was a champion of reform and improvement in college athletics. Largely through his herculean efforts, the higher education community began—however tentatively—an effort to reform some of the abuses in intercollegiate athletics long before the public became aware of the extent of the problems. Last year, the Labor Committee worked closely with him as we wrote the Student Right To Know and Campus Security Act. With Bob's help, we wrote a law that, I believe, assures that students and their families have easy access to vitally important consumer information without creating an excessive paperwork burden on the institutions.

Thanks to Bob Atwell's leadership, higher education is well represented in Washington. Given the wide range of complex public policy issues facing higher education these days, America's colleges and universities are fortunate to have him in this position. I hope that, as a result of the Post article, the vitally important role that he plays will be more widely appreciated.

Mr. President, I ask unanimous consent to have a copy of this article printed in the RECORD so that all of my colleagues will be sure to see it.

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

MOVERS AND SHAKERS: HIGHER EDUCATION'S TOP LOBBYIST

(By Kenneth J. Cooper)

Amid uproar over a new government ban on minority scholarships, Robert H. Atwell calmly suggested that a federal agency "change its position on sober reflection." A week later, it did: A revised policy imposed a partial ban four years hence.

A dissatisfied Atwell went to work on Lamar Alexander, then newly nominated to be education secretary. In public and private, Atwell pressed Alexander to revoke the latest policy and order a thorough review once he took office. And that's exactly what Alexander did.

Atwell's effective lobbying in the past year for minority scholarship—a controversial issue yet to be finally resolved—has demonstrated the influence he wields as the designated spokesman for higher education in Washington. U.S. colleges and universities are represented here by various groups, but only one organization claims to represent them all—public or private, land grant or liberal arts, two-year or four-year. That is the American Council on Education, of which Atwell has been president since 1984.

In that role, Atwell has raised his voice on such education issues as student aid programs, intercollegiate athletics and minorities on campus. In times of controversy, he has spoken out and raised the profile of the council, a coalition of more than 200 higher education groups that, before his tenure, had functioned more as a quiet coordinating body.

A couple of years ago, for instance, Atwell endorsed separate federal aid programs for profitmaking trade-school students because they default on federally guaranteed loans more often than college students do. In a testy response, trade-school leaders noted that the institutions they represent pay taxes, while colleges do not. Atwell's proposal became moot when the new chairman of the House Education and Labor Committee, Rep. William D. Ford (D-Mich.), succinctly rejected it.

Atwell also waged a running battle of words with William J. Bennett when he was education secretary under President Reagan. Bennett questioned the educational value of a contemporary college education and argued that schools boosted tuition only because they knew federal aid would make up the difference. Atwell challenged the factual basis for this suggestion of greed. "Yeah, I took him on," he recalled.

Bennett has a different memory: "If I was saying the condition of higher education was very serious, he was saying it was a mild headache."

* * * * *

Last spring, Atwell stepped forward to oppose Alexander when the education secretary challenged the cultural diversity standards of the Middle States Association of Colleges and Schools, the accrediting body for the mid-Atlantic region, including Maryland and the District. "For me, diversity is a defensible ingredient of educational quality and thus defensible as an accreditation standard, Atwell said.

Alexander charged that the accrediting standards for diversity among students, professors and trustees threatened to create racial quotas while undermining academic freedoms and specialized colleges. As with the minority scholarship issue that surfaced last December, Alexander's final decision on diversity standards is pending.

Atwell acknowledges that his stance on the accreditation issue does not reflect unanimity among the nation's colleges.

"I know perfectly well . . . that there are many of our members who don't agree with the stand we've taken on Middle States accreditation," Atwell said in a recent interview. "But I think you have to, in these jobs, strike a delicate balance between leading and representing. If you only represent, you're gonna be a little mushy."

But there have been some muted noises from One Dupont Circle, where the council and many higher education groups have offices, suggesting that Atwell and the council have been paying too much attention to minority concerns. He acknowledges those criticisms too.

"I don't let that bother me," Atwell said. He noted that the impetus for the minority initiative actually came from Frank Rhodes, president of Cornell University, when he was chairman of the council's board. The current chairman, Robert L. Albright, is president of Johnson C. Smith University, a historically black college in Charlotte, N.C.

There have been times, however, when the council's politics have dictated that Atwell take a low profile on a controversial issue. For instance, he has had little to say in public about "political correctness," a broad slogan used by conservative commentators to describe such campus trends as racial-ethnic diversity, multicultural coursework, offensive speech codes and academic theories such as literary deconstructionism.

Atwell, 60, has negotiated such political battles with the political savvy and knowledge of government and academia that he gained as a former college administrator and federal bureaucrat.

He grew up the son of a Presbyterian minister in Beaver Falls, Pa., a steel town north of Pittsburgh. After undergraduate study at the College of Wooster in Ohio, he was drafted during the Korean War and served as an Army typist in Germany. Afterwards, he received a master's degree in public administration at the University of Minnesota and completed doctoral courses in political science there.

Atwell came to Washington in 1957 for his first jobs. He did two stints crunching numbers at the Old Bureau of the Budget (now the Office of Management and Budget), one as a development loan officer at the State Department and another at the National Institute of Mental Health working on community clinics.

In 1965, he left the government to become a vice chancellor at the University of Wisconsin and stayed five years, spending much of his time handling anti-war protests. His memories of the period differ from those of college administrators who typically felt embattled during those times. But Atwell, like the protesters, opposed U.S. involvement in the Vietnam war.

"I found it a very exhilarating period," he said. "There were some pretty crazy kids, but not very many. Overwhelmingly, it involved students who were quite idealistic . . . I had a lot of friends on the other side of the barricades, if you will—faculty friends and student friends. It all ended badly at Madison when a history building got blown up. That actually happened almost literally the day I left."

Atwell moved to California to become the second president of Pitzer College, one of six Claremont colleges east of Los Angeles. There he wrestled with the racial issues confronting historically white colleges as the first wave of minority students arrived, thanks to the civil rights movement. In this instance, Atwell has some second thoughts.

"We had a very high proportion at Claremont of black and Hispanic students . . . and most of them lived in black and Hispanic corridors in the dorms and ate at black tables in the dining hall," he recalled. "I've often thought that we really didn't do the right thing by a lot of those people, because they really lived a very isolated existence within this predominantly white campus."

In 1978, Atwell left Pitzer to become executive vice president of the American Council on Education. He was hired as president in 1984 after Jack W. Peltason left to become chancellor of the University of California at Irvine. Two years ago, the council signed Atwell to a second five-year contract.

During his seven years as president, Atwell said, the council has achieved his initial goal of becoming more of a presence on higher education issues.

"I felt we needed to be a bit more aggressive and have a higher profile and take some risks that went along with that," he said. "Being a little controversial from time to time was necessary."

LET'S SUPPORT PEACE IN THE WESTERN SAHARA

Mr. KASTEN. Mr. President, I rise today to discuss an important but little noticed U.N. peacekeeping effort which merits our strong support. I refer to the current effort underway to reach a settlement of the dispute over the Western Sahara.

Sovereignty over the Western Sahara has been in dispute since the mid-1970's, when Spain withdrew from what was then called the Spanish Sahara. Since that time, Morocco and the Polisario Front, the latter only thanks to the active support of Algeria and at times Libya, have fought over the territory. Recently, both sides to the dispute agreed to a U.N.-sponsored peace process, leading to a referendum in which the Sahraoui people will choose between continued affiliation with Morocco or independence.

My concern arises from the fact that this peacekeeping effort is at a particularly sensitive juncture, and we in this Senate need to find a way to help the peace process to move forward to a successful resolution. In doing so, we must be sure that our efforts are balanced and appropriate.

There are already resolutions pending before the Senate to urge a successful completion of this sensitive peace process. Last week, our colleague, the senior Senator from Massachusetts, Mr. KENNEDY, introduced a resolution on the Sahara conflict. Last night, the House of Representatives passed a similar resolution. I must regretfully note that I would be forced to oppose either of these resolutions as currently drafted, because the language, although certainly drafted with the best of intentions, is currently biased in favor one party to the conflict over the other.

Let me note from the outset that I believe that the bias in these resolutions can be easily amended to make them balanced and fair, and I wish to express my willingness to work with my colleagues to ensure that my concerns are met. However, I also wish to explain precisely how sensitive this issue is and why we must be most careful in addressing it.

Mr. President, let me begin by noting that I have always believed that this body should be careful in involving itself in the center of the delicate diplomatic efforts anywhere, including those now working to promote peace in this region in the Sahara. In approving sense-of-the-Senate resolutions, there is little that this body can do to promote peace around the world other than urge all sides to move forward toward peace. Indeed, I have always felt that there is much that we can unwittingly do that will be harmful to peace—especially if we support one side against the other—than we can do to help. This is the basis of my concerns about these resolutions.

That said, Mr. President, I believe that my concerns over the current resolution can be met through a few simple word changes. In the many years that Morocco and the Polisario have struggled over the Sahara, key words and phrases have taken on a meaning far beyond that which we understand when we read a resolution for the first time. I am sure that my colleagues will understand this when they consider the enormous force that single words or phrases can take on in an American political campaign. What is true in American politics is also true in the current peace process in North Africa.

Having said that, let me describe the precise status of the peace process. Since the mid-1970s and throughout most of the 1980's, the Polisario, with the financial and military backing of Algeria and Libya, fought a guerilla war against Morocco over the Western Sahara. Indeed, while Morocco controlled the vast majority of the territory, the Polisario, from bases in Algeria and with such sophisticated weaponry as Libyan-provided SAM missiles, fought an aggressive guerilla campaign to push Morocco out. Algeria's support for the Polisario was intended to weaken Morocco, and to secure access to the Atlantic Ocean through Western Sahara ports. Colonel Qadhafi of Libya's motives were the same he had throughout the world: to disrupt and, if possible, overturn any pro-Western government. In the meantime, Morocco, in addition to defending the territory, was engaged in a massive development effort aimed at bringing economic growth and prosperity to one of the most arid and economically distressed areas in the world.

Peace was slow in coming to the Western Sahara. After many years of discussions, however, in August 1988 the parties agreed to participate in a U.N.-sponsored referendum to determine the status of the Western Sahara. It is that referendum which we all hope to see successfully implemented within the next few months.

Since the plan was first announced, it has been the policy of the United States that full authority for carrying out the referendum shall be vested in the United Nations. To that end, U.N. Secretary General Javier Peres de Cuellar has worked tirelessly to bring the parties to agreement on the modalities of this process. After more than 3 years of delicate negotiations, a formal cease-fire became a reality on September 6, and an implementation plan was initiated.

Mr. President, the United States fully supports the United Nations in these efforts and acknowledges that it is the United Nations that shall play the central role in implementing this referendum. In its own documents explaining the referendum process, the United Nations states that it shall "organize and conduct the referendum, and issue the necessary regulations, rules and instructions for this purpose, in which the people of the Western Sahara will choose between independence or integration with Morocco." The document further notes that "the United Nations will monitor other aspects of the administration of the Territory, especially the maintenance of law and order, to ensure that the necessary conditions exist for the holding of a free and fair referendum." Given the success which the United Nations has had so far, I see no reason at this time why the United States should do anything other than fully support the United Nations in this role.

Mr. President, I would ask unanimous consent that the full United Nations statement of its responsibilities

for the resolution of the conflict in the Sahara from which I have just quoted be inserted in the RECORD following my statement.

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

(See exhibit 1.)

Mr. KASTEN. Mr. President, I am pleased to note that the Secretary General remains fully engaged in this peace process and confident of its eventual success. In recent statements by the Secretary General in an interview with the French weekly Le Figaro, Mr. Peres de Cuellar asserted that "Morocco has never requested a suspension or delay of the process undertaken by the U.N." The Secretary General added that His Majesty Hassan II of Morocco had expressed justified concerns that the work of the United Nations voter identification commission was behind schedule. And during an interview granted to the Paris-based weekly Jeune Afrique on September 10, the Secretary General asserted there had been no complaints concerning the implementation of the ceasefire. He declared that he had spoken to the King by telephone on August 26, and "the King told me what he has always said, that is, that he supported the referendum and that he expected it to be just and impartial." In addition, the United Nations has repeatedly indicated that the organization of the referendum is moving ahead with no more than the logistical challenges normal to such a complicated process. The United States should continue to support the efforts of the United Nations, and reaffirm its confidence in the United Nations capacity to see the process through. This sounds to me like a process that is moving smoothly, and I hope we will be careful in trying to help it along.

There is one other reason why we should treat this resolution with care, Mr. President: Morocco is one of the closest friends of the United States, and deserves our strong support. The Morocco-United States treaty relationship is the longest-standing such relationship our nation has. Morocco is one of our closest allies, and was one of the very first countries to state its opposition to Saddam Hussein's invasion of Kuwait. Indeed, King Hassan II's early and forceful statement of opposition to Iraqi aggression, and Morocco's quick dispatch of troops to defend Saudi Arabia from attack was vital to the early efforts to build worldwide support in opposition to Saddam Hussein's invasion of Kuwait. In addition, and up to and including the current negotiating process, Morocco has long supported a comprehensive peace in the Middle East, and through quiet diplomacy has helped United States efforts to promote peace.

Mr. President, at this sensitive time we in the U.S. Senate should not choose sides. Right now, in the middle of a United Nations referendum, we should support peace, and only peace. I will seek to work with my colleague from Massachusetts, and any other Senator, to find a way to make the necessary changes to this resolution to ensure that it is not biased toward either party, indeed that it is biased only in support of peace. That is how we can help move this process forward.

EXHIBIT 1—MINURSO WESTERN SAHARA THE UNITED NATIONS AND THE REFERENDUM IN WESTERN SAHARA

On 11 August 1988, the Secretary-General of the United Nations and the Special Envoy of the then Chairman of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) presented, in separate meetings, to the parties to the conflict in Western Sahara, namely Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Rio de Oro (Frente POLISARIO), a document referred to as "the settlement proposals". The document contained proposals for a just and definitive solution of the question of Western Sahara in conformity with General Assembly resolution 1514 (XV), by means of a cease-fire and the holding of a referendum without military or administrative constraints to enable the people of Western Sahara, in the exercise of their right to self-determination, to choose between independence and integration with Morocco.

On 27 June 1990, the Security Council, in its resolution 658 (1990), approved a report of the Secretary-General on the situation concerning Western Sahara (S/21360), which contained the full text of the settlement proposals as accepted by the two parties on 30 August 1988 as well as an outline of the plan provided by the Secretary-General in order to implement those proposals.

THE IMPLEMENTATION PLAN

The implementation plan contained in document S/21360 provides for a transitional period during which the Special Represenative of the Secretary-General, acting under the authority of the Secretary-General and, as necessary, on instructions from and in consultation with him, will have sole and exclusive responsibility over all matters relating to the referendum, including its organization and conduct. The Special Representative will be assisted in his tasks by a deputy special representative and by an integrated group of United Nations civilian, military and civil police personnel which he will head and direct. This group will be known as the United Nations Mission for the Referendum in Western Sahara (MINURSO).

Pursuant to Security Council resolution 621 (1988) of 20 September 1988, the Secretary-General appointed Mr. Hector Gros Espiell as his Special Representative for Western Sahara, with effect from 19 October 1988. Upon his resignation, Mr. Gros Espiell was succeeded by Mr. Johannes J. Manz with effect from 19 January 1990.

According to the implementation plan contained in document S/21360, the transitional period will begin with the coming into effect of a cease-fire and end with the proclamation of the results of the referendum. The cease-fire will be monitored by United Nations military personnel, followed by an exchange of prisoners of war under the auspices of the International Committee of the Red Cross (ICRC). Morocco will undertake an appropriate, substantial and phased reduction of its troops in the Territory during the transitional period, to a level acceptable to the Secretary-General. The combatants on each side will be confined to certain locations specified by the Special Representative where they will be monitored by United Nations military personnel. Following on the proclamation of an amnesty, political prisoners will be released and all laws or regulations which, in the view of the Special Representative, could impede the holding of a free and fair referendum will be suspended to the extent the Special Representative deems this to be necessary. The United Nations will organize and conduct a referendum, and issue the necessary regulations, rules and instructions for this purpose, in which the people of Western Sahara will choose between independence or integration with Morocco. The United Nations will monitor other aspects of the administration of the Territory, especially the maintenance of law and order, to ensure that the necessary conditions exist for the holding of a free and fair referendum. All refugees and other Western Saharans resident outside the Territory who have been identified as having the right to vote in the referendum and who have expressed the wish to return to the Territory, will be enabled to do so, together with their immediate families, through a programme organized by the Office of the United Nations High Commissioner for Refugees (UNHCR).

To assist the Special Representative in fulfilling his responsibilities with regard to the identification and registration of those eligible to vote, the Secretary-General will appoint and issue terms of reference for an identification commission. The identification Commission will implement the agreed position of the parties that all Western Saharans counted in the 1974 census undertaken by the Spanish authorities and aged 18 years or over will have the right to vote, whether currently present in the Territory or outside as refugees or for other reasons. The Commission is required to update the census to provide a current basis for issuing lists of qualified voters. Any person identified as qualified to vote will be issued with a voter registration card.

To assist the Special Representative in all other aspects of the organization and conduct of the referendum, the Secretary-General will appoint and issue terms of reference for a referendum commission. As far as the establishment of the conditions and modalities for the conduct of the referendum campaign are concerned, the Referendum Commission will advise the Special Representative on the measures necessary to ensure a referendum that is free and fair, without military or administrative constraints.

ESTABLISHMENT OF MINURSO

On 29 April 1991, the Security Council in its resolution 690 (1991) decided to establish, under its authority, a United Nations Mission for the Referendum in Western Sahara (MINURSO), in accordance with a report of the Secretary-General (S/22464) which further detailed his implementation plan. The Council also decided that the transitional period would begin no later than 16 weeks after the General Assembly approved the MINURSO budget.

The Secretary-General stresses in his report (S/22464) that four conditions must be met for MINURSO to be able to carry out its responsibilities effectively and with complete impartiality. Firstly, MINURSO must at all times have the full support and backing of the Security Council; secondly, it must operate with the full cooperation of the two parties, particularly with regard to the comprehensive cessation of all hostile acts; thirdly, the cooperation and support of the neighbouring countries must be assured; and

fourthly, the necessary financial resources must be made available by Member States in a full and timely manner.

TIMETABLE

In accordance with the timetable set out in document S/22464, it is envisaged that the transitional period will last for 20 weeks and that MINURSO will remain in the Territory for up to 26 weeks from the coming into effect of the case-fire (D-Day). However, as noted in document S/22464, the periods of time allowed for the various processes in the timetable are estimates and it is possible that some of the processes may be completed in a shorter period than that indicated. It is also possible, of course, that a longer period will be required. In either case, the Special Representative may, after consultation with the Secretary-General, determine whether circumstances require any alteration in the timetable, in accordance with the authority given to him.

DATE (IN WEEKS) AND ACTION

As soon as the Security Council has authorized the establishment of MINURSO

The Secretary-General:

a. Appoints the Identification Commission, which proceeds immediately to establish its rules of procedure, to update the 1974 census and to arrange for appeals;

b. Begins consultations with the Governments of Member States that will be invited to contribute personnel to the civilian, security and military units of MINURSO:

c. After consulting the parties, obtains the Security Council's approval for the composition of the Military Unit and the appointment of the Force Commander;

d. Initiates consultations with the parties and the neighbouring States about arrangements concerning the status of MINURSO and its personnel.

D–16

The General Assembly approves MINURSO's budget.

The Secretary-General addresses letters to the two parties proposing a date and time for the entry into force of the cease-fire (D-Day).

The Secretary-General appoints the Referendum Commission and the independent jurist.

The Identification Commission revises the 1974 census list and initiates discussions with the tribal chiefs regarding its operating procedures.

Not later than D–12

The parties accept the Secretary-General's proposal for the date and time of the cease-fire.

D–12

The revised 1974 census list and instructions on how to apply for the inclusion of names are published in the Territory and elsewhere.

Administrative and logistics elements of MINURSO begin to arrive in the mission area.

D–9

A small mobile team of the Identification Commission is dispatched to the mission area.

D–8

Deadline for the receipt of applications for the inclusion of names in the revised 1974 census list.

D–4

The advance party of MINURSO led by the Deputy Special Representative, arrives in the mission area.

D–4 to D–Day

All MINURSO units (except the infantry battalion, 200 CIVPOL officers and some UNHCR and referendum personnel) are deployed to the mission area.

D–1

Arrival of the Special Representative in the Territory.

Not later than D-Day

Following completion of the Identification Commission's review of applications received, the consolidated list of persons judged eligible to vote is published in the mission area.

D-Day

The transitional period begins.

The cease-fire comes into effect and the combatants of the two sides are confined to designated locations.

The Identification Commission begins the identification and registration of voters and hears appeals against non-inclusion of names in the published list.

As soon as possible after D-Day

POW's are exchanged.

Amnesties for political prisoners and detainees are proclaimed.

All political prisoners or detainees are released.

D + 10

The remaining 200 CIVPOL officers are phased in.

The infantry battalion, UNHCR personnel are deployed to the mission area.

Not later than D + 11

The reduction of Moroccan forces is completed.

All laws or measures that could obstruct a free and fair referendum are suspended.

D + 11

Completion of the identification and registration of voters; publication of the final list of voters approved by the Secretary-General.

The repatriation programme begins.

The paramilitary units in the existing police forces are neutralized.

D + 17

The repatriation programme is completed.

The referendum campaign begins.

D + 18

Additional polling staff are deployed to the Territory.

D + 20

End of the referendum campaign.

Referendum.

Proclamation of the results.

The withdrawal of MINURSO personnel begins.

D + 24 or 26

MINURSO's monitoring responsibilities arising from the referendum results are completed.

Thereafter

Remaining MINURSO personnel withdraw from the mission area.

The General Assembly approved MINURSO's budget on 17 May 1991 (A/RES/45/266).

On the basis of this timetable, the referendum will be held about 36 weeks after the General Assembly approves MINURSO's budget.

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CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The period for morning business is closed.

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

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

Mr. DOLE. Mr. President, I have checked with the distinguished Senator from Arizona. He has no objection to my proceeding for 5 minutes of my leader's time.

The PRESIDING OFFICER. The Senator is recognized in his leader time.

MORE FOOD CREDITS

Mr. DOLE. Mr. President, we have all seen the report in the last couple of days about the possibility of additional food guarantees for the Soviet Republics.

The White House is consulting with various Members of the White House right now. An announcement may be coming from the White House today, maybe as early as noon, maybe shortly thereafter.

It does seem to me we ought to provide some additional credit guarantees to the Republics of the former Soviet Union for two very good reasons.

One, there are some people over there who are going to have a very tough winter, who are hungry, and who do need our help.

For all the partisan posturing and rhetoric we have heard in recent weeks, and the knee-jerk, talking heads interpretation of this or that election—the fact is that the American people do still want to help truly needy people—people who are sick, or hungry, or homeless—whether they happen to be here or live somewhere else. That is part of the American tradition, and it has not changed. We are decent and caring people, and no poll or election result is going to convince me otherwise.

So that is reason No. 1.

But there is a second reason, too—I think an even more compelling reason. We ought to provide some additional credit guarantees because it is in the American interest—our own interest.

We have benefited, enormously, by the dramatic changes in the Soviet Union. Our Nation is safer. The prospects for even further arms reductions are better. The threat from what used to be, in effect, forward Soviet bases in places such as Cuba are reduced. The prospects for successful resolution of very dangerous international crises are enhanced. And the long term prospects for mutually beneficial investment and trade relations are vastly improved.

So it is in our concrete, material interest, the interest of all Americans, to do what we can to keep the Soviets on

the right track. It is an investment in America's national interest. And, in the short run, providing food credit guarantees is the best, least costly way we can make that investment.

And let us not forget: Food credit guarantees are not give-aways. The loans we are guaranteeing have to be repaid. And, considering how much the Soviets need us over the long term. I think the logic is the Soviets will repay these loans.

And I can say as an aside we have already extended $2.5 billion in credit guarantees. They have not paid any of the principal, but they have kept the interest payments to date, and that is some indication. Not only the central government, but the Republics—where the action now is—have commonly committed to that repayment.

In this additional $1½ billion credit package, which I assume will be announced today, we are dealing now with Republics, directly with Republics, which I think is an improvement over dealing with the central government. That is something the administration has agreed to do, and I think rightfully so.

Moreover, what will result from the loans is commercial purchase of our food exports—something that benefits not only our farmers, but a wide range of intermediary businesses, and our overall balance of trade.

So providing additional credits makes sense both because it is right, and because it is in our own concrete material interest.

But lets face it. No matter how right it is, no matter how much sense it makes for America—some politicians, some political and media consultants, are going to drool at the prospect of exploiting any such proposals or programs for partisan purposes. The opportunities for cheap-shot 30-second spots are obvious to any of us who are in this business.

I happen to think President Bush is going to go ahead and do the right thing regardless of any temporary political jeopardy he might face. If it comes to that, he can stand a blip in the polls, and he will stand it—if the national interest demands it.

But I think we ought to just be fair about this.

I understand the distinguished Senator from Oklahoma [Mr. BOREN] said pretty much the same thing earlier today on the floor. If there is some political heat on this issue—well, there is plenty of room in the kitchen for all of us.

Sometimes we on Capitol Hill complain about being pulled into crash landings when we were not involved in the takeoffs. Let us get on board this plane—which I happen to think is going to come in for a successful landing, in any case—before the takeoff.

We ought to have an expression of the leadership and others in the Congress on both sides of the aisle that this is in our own national interest, and that is precisely one of the two reasons I have given for doing it.

The distinguished Senator from Georgia found out what happens when it gets wrapped up in politics. He had a pretty good provision in the defense authorization bill. But because so many Democrats were shooting at President Bush, Republicans started then shooting at his proposal. And it was finally dropped.

So I think maybe it is time to call time out or a moratorium, and let us go on and do what is in the national interest.

So I hope that the Congress can be brought into the action on this issue at an early stage. That is already happening, to a degree with the contacts and consultations going on now. The White House and the State Department have been contacting a number of my colleagues on the other side of the aisle and in the other body.

But I hope that Congress will meet its responsibility in a more direct way—perhaps through direct leadership consultations with the President; perhaps through a resolution of congressional support for the Credit Guarantee Program.

This is an important issue for our national security, and our economic well-being. It is a politically sensitive issue. It is an issue on which Congress as an institution, and every one of us as Members, ought to be willing to stand up and be counted.

I must say, it is sort of a Catch-22 for the President of the United States. I have noted with some interest some of the farm State Members of Congress saying, "Well, it is not enough. We ought to do more; we ought to do more"; $1.5 billion in credit, plus $2.5 billion in credit guarantees we have already given are not enough. I am not certain the average American would share that view, but that is one side.

Then we have, on the other side, the large farm constituency: "We should not do anything. This is too much."

And, of course, right in the middle—when you take on that responsibility, that is where, I guess, you should be—is the President of the United States, President George Bush. It just seems to me that before he makes any announcement, he ought to make certain that some of us in the Congress in positions of leadership are willing to support what he does, for the reasons I have tried to outline in my brief statement.

It is easy to say, as some have said: Well, if you live anywhere but America, President Bush will take care of you. That is a pretty tough, cheap, political shot. But it has been said many, many times. And it involves many, many countries, wherever they may be: A lot of emerging democracies; a lot of Mideast countries.

I think overall, we want to ask ourselves, by investing $1 billion or $2 billion or $3 billion now in trying to help the Soviet Union, are we going to avoid riots? Food riots, famine, another coup, another dictatorship? I cannot help but wonder what happened to all those KGB people who got kicked out, and all the bureaucrats who got kicked out, and all those people in the Army who got kicked out. I cannot believe they are sitting around Moscow saying: Boy, is it not great we got kicked out? They are probably like other people in politics. Once you get out, you want to get back in. So they are looking for unrest and they are looking for turmoil.

Again, I underscore it is in our concrete national interest that we do this. I hope it will have strong bipartisan support. I think it does have strong bipartisan support, and I guess if we had a vote in this Senate, it would be pretty lopsided. Not that we are trying to give money away; not that we are trying to help somebody else; but that we are considering our national interest. And it seems to me that ought to be the bottom line.

And I hope sometime before the announcement is made, or even after the announcement is made, there will be an expression by Members of the U.S. Senate in the form of a resolution or something else to indicate we support this particular effort, for the reasons I have outlined, and probably many other better reasons that my colleagues might have.

Mr. President, I thank my colleagues from Arizona and Wyoming, and I yield the floor.

VETERANS POST-TRAUMATIC STRESS DISORDER TREATMENT ACT

Mr. DECONCINI. Mr. President, on behalf of the majority leader and under the authority granted to him, I ask unanimous consent that the Chair lay before the Senate S. 869.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 869) to amend title 38, United States Code, to improve the availability of treatment for veterans for post-traumatic stress disorder, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Veterans' Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the "Veterans Health Care Amendments Act of 1991".

(b) REFERENCES TO TITLE 38.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—MENTAL HEALTH

PART A—POST-TRAUMATIC STRESS DISORDER

SEC. 101. SHORT TITLE.

This part may be cited as the "Veterans Post-Traumatic Stress Disorder Treatment Act of 1991".

SEC. 102. FINDINGS.

The Congress finds the following:

(1) Post-traumatic stress disorder (PTSD) is a highly disruptive and debilitating psychological disorder that can result from exposure to combat or any other traumatic event outside the range of conventional human experience.

(2) Post-traumatic stress disorder can have a destructive impact on the life of a person suffering from the disorder by adversely affecting his or her behavior, ability to work with, relate to, and communicate with others, and ability to maintain gainful employment.

(3) In 1980, the American Psychiatric Association officially recognized PTSD as a diagnosis in its "Diagnostic and Statistical Manual of Mental Disorders (Third edition)" and identified combat experience as a potential cause for PTSD.

(4) A Congressionally-mandated study of Vietnam-era veterans, released in November 1988, regarding the frequency of symptoms of PTSD and other problems relating to readjustment from combat of such veterans, found that 479,000 male veterans of the Vietnam theater of operations (representing 15.2 percent of all such male veterans) suffered from the full effects of PTSD and that another 350,000 of such veterans (representing 11.2 percent of all such male veterans) experienced some symptoms of the PTSD.

(5) That study also found higher incidences of PTSD among Black and Hispanic male veterans of the Vietnam theater of operations than among all male veterans of that theater, but did not include data on the incidence of the disorder among veterans of other ethnic groups.

(6) A large body of evidence indicates that such psychological disorders related to combat stress as war neurosis, combat fatigue, and the disorder commonly known as "shell shock" are analogous to PTSD and that thousands of veterans of combat in World War II and the Korean war experienced and continue to experience symptoms of such disorders.

(7) That evidence also indicates that veterans of combat in military operations conducted after the Vietnam era, including operations in Lebanon, Granada, and Panama, also suffer from symptoms of PTSD.

(8) Although debilitating, PTSD can be treated successfully, and an individual experiencing the disorder can learn coping skills, including how to mitigate the effects of the anxiety, depression, anger, guilt, fear, alienation, and emotional outbursts that he or she experiences.

(9) Early intervention and treatment of acute PTSD can be an important part of a therapeutic course to prevent long-term chronic PTSD.

(10) The Department of Veterans Affairs has a responsibility to provide opportunities for treatment of PTSD and other stress-related psychological problems to the hundreds of thousands of combat veterans who suffer from PTSD and to conduct outreach activities that provide both actual notice of the availability of such treatment to those veterans and appropriate encouragement for such veterans to participate in the treatment.

(11) The Department has made some progress in expanding diagnosis and treatment programs relating to PTSD.

(12) Through readjustment counseling, specialized inpatient and outpatient programs, and general psychiatric services offered in its hospitals and outpatient clinics, the Department has provided needed treatment to thousands of veterans for PTSD.

(13) Despite such progress the Department can and should be doing much more to provide treatment to veterans for PTSD and other stress-related psychological problems and to provide outreach services to make veterans aware of, and encourage them to participate in, treatment opportunities available through the Department.

(14) It is in the public interest for the Secretary of Veterans Affairs to develop a plan that ensures immediate, on-demand treatment opportunities for the thousands of veterans who suffer from, and need treatment for, this disruptive, life-threatening disorder.

SEC. 103. CARE FOR COMBAT-THEATER VETERANS WITH SERVICE-RELATED POST-TRAUMATIC STRESS DISORDER.

(a) REQUIREMENT TO FURNISH CARE AND SERVICES.—(1) Section 602 is amended—

(A) by inserting "(a)" before "For"; and

(B) by adding at the end the following new subsections:

"(b)(1) A veteran referred to in paragraph (2)(A) who is diagnosed by a mental health professional designated by the Chief Medical Director (following an examination of the veteran by such professional) to be suffering from post-traumatic stress disorder related to service referred to in such paragraph shall be furnished care and services for such disorder pursuant to sections 610(a)(1)(A) and 612(a)(1)(A) of this title even though such disorder has not been determined to be service connected.

"(2)(A) A veteran eligible for the care and services referred to in paragraph (1) is a veteran who, as determined by the Chief Benefits Director, served on active duty in a theater of combat operations (as defined by the Secretary) during World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, or in any other area during a period in which hostilities occurred in such area.

"(B) In the case of a veteran who is diagnosed as suffering from post-traumatic stress disorder, the determination of whether the veteran served on active duty as described in subparagraph (A) shall be made by the most expeditious means practicable.

"(c) For the purposes of subsection (b) of this section, the term 'hostilities' means an armed conflict in which members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.".

(2)(A) The heading of such section is amended to read as follows:

"§602. Special provisions relating to mental illness disabilities".

(B) The item relating to such section in the table of sections at the beginning of chapter 17 is amended to read as follows:

"602. Special provisions relating to mental illness disabilities.".

(b) TIMELINESS OF EVALUATION AND VERIFICATION OF STATUS.—Section 612A is amended—

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection (i):

"(i) Whenever a veteran is referred by a center to a Department general health-care facility for a determination regarding such veteran's eligibility for care and services under section 602(b) of this title, the veteran shall be evaluated for diagnostic purposes within seven days after the date on which the referral is made.".

SEC. 104. ELIGIBILITY FOR SERVICES AT VET CENTERS.

Subsection (a) of section 612A is amended by adding at the end the following new paragraph:

"(3) Upon the request of any veteran who served on active duty in a theater of combat operations (as defined by the Secretary) during World War II or the Korean conflict, the Secretary shall furnish counseling to such veteran in order to assist the veteran to overcome any psychological problems associated with such service. The counseling shall include a general mental and psychological assessment to ascertain whether the veteran has mental or psychological problems associated with such service.".

SEC. 105. IMPROVEMENT OF POST-TRAUMATIC STRESS DISORDER TREATMENT AND OUTREACH SERVICES OF THE DEPARTMENT OF VETERANS AFFAIRS.

(a) PLAN FOR TREATMENT AND OUTREACH SERVICES IMPROVEMENT.—Not later than December 1, 1991, the Secretary of Veterans Affairs shall devise and initiate implementation of a plan—

(1) to increase the availability of treatment of veterans suffering from post-traumatic stress disorder by the Department of Veterans Affairs (including treatment provided in inpatient and outpatient programs providing specialized treatment for PTSD, treatment for PTSD in conjunction with substance abuse, and treatment in Vet Centers) to levels commensurate with the needs of veterans suffering from the disorder as a result of active duty; and

(2) to enhance outreach activities—

(A) to inform combat veterans (including veterans who are members of ethnic minority groups), the family members of such veterans, and appropriate State and local health organizations and social service organizations of the availability of such treatment; and

(B) to provide appropriate encouragement for such veterans to participate in such treatment.

(b) SPECIAL CONSIDERATIONS.—In devising the plan, the Secretary shall consider—

(1) the level and geographic accessibility of inpatient and outpatient care for veterans suffering from PTSD across the United States;

(2) the desirability of providing for inpatient PTSD care to be furnished to such veterans in facilities of the Department that are physically independent of general psychiatric wards of the medical facilities of the Department; and

(3) the treatment needs of such veterans who are women, of such veterans who are members of ethnic minorities (including Native Americans, Native Hawaiians, Asian-Pacific Islanders, and Native Alaskans), and of such veterans who suffer from substance abuse problems as well as PTSD.

(c) IMPLEMENTATION.—In carrying out the plan, the Secretary shall—

(1) prescribe a schedule for the implementation of the plan;

(2) prescribe appropriate criteria for the selection and training of staff necessary to increase the availability of the treatment and enhance the outreach activities referred to in subsection (a); and

(3) provide the facilities, personnel, funds, and other resources necessary to carry out the plan.

(d) DEFINITIONS.—For the purposes of this section:

(1) The term "Vet Center" shall have the meaning given the term "center" in section 612A(j)(1) of title 38, United States Code (as redesignated by section 103(b)(1) of this Act).

(2) The term "active duty" shall have the meaning given such term in section 101(21) of such title.

(3) The term "veteran" shall have the meaning given such term in section 101(2) of such title.

SEC. 106. REPORT BY THE SECRETARY OF VETERANS AFFAIRS.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act and subject to subsection (b), the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Rep-

resentatives a report on the plan required by section 105. The report shall contain the following information:

(1) A description of the plan.

(2) What facilities, personnel, funds, and other resources are necessary to increase the availability of treatment and enhance outreach activities in accordance with the plan in a manner that does not reduce the existing capacity of the Department of Veterans Affairs to provide treatment for other conditions.

(3) A description of the efforts undertaken by the Secretary to make such resources available for the treatment of veterans for post-traumatic stress disorder.

(4) An estimate of the availability of community-based residential treatment of veterans for post-traumatic stress disorder and the impact of such availability on the increased availability of such treatment by the Department.

(5) An assessment of the need for, and potential benefit of, making available scholarships, tuition reimbursement, or other educational assistance to health-care students and health-care professionals in order to improve the training and specialization of such individuals in the provision of such treatment.

(6) A description of the efforts of the Secretary to implement the recommendations of the Special Committee on Post-Traumatic Stress Disorder referred to in subsection (b) with respect to—

(A) establishing educational programming that is directed to each of the various levels of education, training, and experience of the various mental health professionals involved in the treatment of veterans suffering from PTSD; and

(B) giving research relating to PTSD a high priority in the allocation of funds available to the Department in research activities relating to mental health.

(7) Such other proposals and recommendations as the Secretary considers appropriate to increase the availability of such treatment.

(b) REPORT ASSISTANCE.—In preparing the report referred to in subsection (a), the Secretary shall consult with the Special Committee on Post-Traumatic Stress Disorder established pursuant to section 110(b) of the Veterans' Health Care Act of 1984 (38 U.S.C. 612A note) and the Secretary's Advisory Committee on Readjustment of Vietnam Veterans.

SEC. 107. TECHNICAL AMENDMENTS.

Section 612A is amended—

(1) in subsection (a)(1), by striking out "Administrator" and "Veterans' Administration" each place it appears and inserting in lieu thereof "Secretary" and "Department", respectively;

(2) in subsection (h)—

(A) by striking out "Administrator" and "Veterans' Administration" each place it appears and inserting in lieu thereof "Secretary" and "Department", respectively; and

(B) in paragraph (5), by striking out "the Secretary considers" and inserting in lieu thereof "such Secretary considers"; and

(3) in subsection (j) (as redesignated by section 103(b)(1)), by striking out "Veterans' Administration" each place it appears and inserting in lieu thereof "Department".

SEC. 108. SPECIAL COMMITTEE ON POST-TRAUMATIC STRESS DISORDER.

(a) EVALUATION OF STUDY OF POSTWAR PSYCHOLOGICAL PROBLEMS OF VIETNAM VETERANS.—(1) Not later than February 15, 1992, the Special Committee on Post-Traumatic Stress Disorder (hereinafter in this section referred to as the "Special Committee") established pursuant to section 110(b)(1) of the Veterans' Health Care Act of 1984 (38 U.S.C. 612A note) shall submit concurrently to the Secretary of Veterans Affairs and the Committees on Veterans' Affairs of the Senate and House of Representatives (hereinafter in this section referred to as the "Committees") a report setting forth the Special Committee's evaluation of the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (38 U.S.C. 612A note). Such report shall include the Special Committee's—

(A) overall evaluation of the conduct, validity, and meaning of the study;

(B) assessment of the capability of the Department of Veterans Affairs to meet the need for diagnosing and treating veterans for post-traumatic stress disorder and for other psychological problems in readjusting to civilian life, as estimated in the results of such study;

(C) evaluation of the Secretary's report on the study; and

(D) recommendations for any further or follow-up research on the matters addressed in the study.

(2) Not later than 30 days after receiving the Special Committee's report under paragraph (1), the Secretary shall submit to the Committees any comments concerning the report that the Secretary considers appropriate.

(b) UPDATES OF REPORTS UNDER SECTION 110(c) OF PUBLIC LAW 98-528.—(1) Not later than February 1 of each of 1992 and 1993, the Special Committee shall concurrently submit to the Secretary and the Committees a report containing information updating the reports submitted to the Secretary under section 110(e) of the Veterans' Health Care Act of 1984, together with any additional information the Special Committee considers appropriate regarding the overall efforts of the Department of Veterans Affairs to meet the needs of veterans with post-traumatic stress disorder and other psychological problems in readjusting to civilian life.

(2) Not later than 60 days after receiving each of the Special Committee's reports under paragraph (1), the Secretary shall submit to the Committees any comments concerning the report that the Secretary considers appropriate.

SEC. 109. FUNDING FOR POST-TRAUMATIC STRESS DISORDER PROGRAMS.

In the documents providing detailed information on the budget for the Department of Veterans Affairs that the Secretary of Veterans Affairs submits to the Congress in conjunction with the President's budget submission for fiscal year 1993 and for fiscal year 1994 pursuant to section 1105 of title 31, United States Code, the Secretary shall identify the amounts in the appropriations requests for Department accounts that are estimated to be obligated for—

(1) the payment of compensation to veterans for disabilities resulting from post-traumatic stress disorder (hereinafter in this section referred to as "PTSD") that is service connected;

(2) the treatment of veterans by or at the expense of the Department for PTSD related to their active-duty service, including specific designation of funds for the treatment of PTSD—

(A) in PTSD programs designated pursuant to section 110(a)(1) of the Veterans' Health Care Act of 1984 (38 U.S.C. 612A note);

(B) in inpatient psychiatric programs and outpatient mental health programs other than such designated PTSD programs;

(C) in readjustment counseling programs pursuant to 612A of title 38, United States Code; and

(D) under contract through non-Department sources furnishing (i) readjustment counseling services pursuant to section 612A(e) of such title, (ii) mental health services pursuant to such section 612A(e), or (iii) mental health services pursuant to other authority, and described in the first annual report submitted pursuant to section 110(e)(1) of the Veterans' Health Care Act of 1984 as having been proposed by the Special Committee on Post-Traumatic Stress Disorder;

(3) education, training, and research at—

(A) the National Center on Post-Traumatic Stress Disorder established under section 110(c) of such Act;

(B) any centers of mental illness research, education, and clinical activities that may be established at Department medical centers; and

(C) other Department research facilities; and

(4) the operation of the National Center on Post-Traumatic Stress Disorder.

SEC. 110. SELECTION OF LOCATIONS FOR NEW POST-TRAUMATIC STRESS DISORDER TREATMENT UNITS.

(a) ACCESSIBILITY OF PTSD TREATMENT UNITS TO VETERANS IN RURAL AREAS.—(1) Subchapter I of chapter 81 is amended by adding at the end the following new section:

"§ 8117. Locations of PTSD treatment units

"The Secretary shall to the extent practicable ensure that there are Department post-traumatic stress disorder treatment units in locations that are readily accessible to veterans residing in rural areas of the United States.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 8116 the following new item:

"8117. Locations of PTSD treatment units.".

(b) IMPLEMENTATION.—In determining where to locate post-traumatic stress disorder units which may be established after the date of the enactment of this Act, the Secretary of Veterans Affairs shall give strong consideration to locations referred to in section 8117 of title 38, United States Code, as added by subsection (a)(1).

PART B—MENTAL ILLNESS RESEARCH AND EDUCATION

SEC. 121. MENTAL ILLNESS RESEARCH, EDUCATION, AND CLINICAL CENTERS.

(a) IN GENERAL.—Subchapter II of chapter 73 is amended—

(1) by redesignating sections 7316 and 7317 as sections 7317 and 7318, respectively; and

(2) by inserting after section 7315 the following new section 7316:

"§ 7316. Mental illness research, education, and clinical centers

"(a) The purposes of this section are to facilitate the improvement of health-care services for eligible veterans suffering from mental illness, especially service-related conditions, through research, the education and training of health personnel, and the development of improved models for the furnishing of clinical services.

"(b)(1) In order to carry out the purposes of this section, the Secretary, upon the recommendation of the Chief Medical Director and pursuant to the provisions of this subsection, shall designate not more than five health-care facilities of the Department as the locations for centers of mental illness research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this section.

"(2) The Secretary shall designate at least one facility under paragraph (1) not later than January 1, 1992.

"(3) In designating facilities as the locations for centers under paragraph (1), the Secretary, upon the recommendation of the Chief Medical Director, shall ensure appropriate geographic distribution of such facilities.

"(4) The Secretary may not designate any health-care facility as a location for a center under paragraph (1) unless the Secretary, upon the recommendation of the Chief Medical Director, determines that the facility has (or may reasonably be anticipated to develop)—

"(A) with an accredited medical school which provides education and training in psychiatry and with which such facility is affiliated, an ar-

rangement under which residents receive education and training in psychiatry through regular rotation through such facility so as to provide such residents with training in the diagnosis and treatment of mental illness;

"(B) with an accredited graduate school of psychology which provides education and training in clinical or counseling psychology or both and with which the facility is affiliated, an arrangement under which students receive education and training in clinical or counseling psychology or both through regular rotation through such facility so as to provide such students with training in the diagnosis and treatment of mental illness;

"(C) an arrangement under which nursing, social work, or other allied health personnel receive training and education in mental health care through regular rotation through such facility;

"(D) the ability to attract the participation of scientists who are capable of ingenuity and creativity in research into the causes, treatment, and prevention of mental illness and into models for furnishing care and treatment to veterans suffering from mental illness;

"(E) a policymaking advisory committee composed of appropriate mental health-care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center; and

"(F) the capability to conduct effectively evaluations of the activities of such center.

"(c) Activities of clinical and scientific investigation at each center shall be eligible to compete for the award of funding from amounts appropriated for the Department of Veterans Affairs medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for mental illness.

"(d) There are authorized to be appropriated for the basic support of the research and education and training activities of the centers established pursuant to subsection (b)(1), $3,125,000 for fiscal year 1992 and $6,250,000 for each of the three subsequent fiscal years. The Chief Medical Director shall allocate to such centers from other funds appropriated generally for the Department of Veterans Affairs medical care account and medical and prosthetics research account such amounts as the Chief Medical Director determines appropriate.

"(e) The Chief Medical Director shall ensure that research activities carried out through centers established under subsection (b)(1) include an appropriate emphasis on the psychosocial dimension of mental illness and on proposals of means of furnishing care and treatment to veterans suffering from mental illness.

"(f) The Chief Medical Director shall ensure that useful information produced by the research, education and training, and clinical activities of the centers established under subsection (b)(1) is disseminated throughout the Veterans Health Administration through the development of programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title and other means.

"(g) The official within the Central Office of the Veterans' Health Administration responsible for mental health and behavioral sciences matters shall be responsible for the supervision of the operation of the centers established pursuant to subsection (b)(1).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 is amended by striking out the items relating to sections 7316 and 7317 and inserting in lieu thereof the following:

"7316. Mental illness research, education, and clinical centers.

"7317. Malpractice and negligence suits: defense by United States.

"7318. Hazardous research projects: indemnification of contractors.".

(c) REPORTS.—Not later than February 1 of each of 1993, 1994, and 1995, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience during the prior fiscal year under the centers established pursuant to section 7316 of title 38, United States Code (as added by subsection (a)). Each such report shall contain the following:

(1) A description of—

(A) the activities carried out at each center and the funding provided for such activities;

(B) the advances made at each center in research, education and training, and clinical activities relating to mental illness in veterans; and

(C) the efforts made by the Chief Medical Director of the Department of Veterans Affairs pursuant to subsection (e) of such section (as so added) to disseminate throughout the Veterans Health Administration useful information derived from such activities.

(2) The Secretary's evaluations of the effectiveness of the centers in fulfilling the purposes of the centers.

TITLE II—GENERAL HEALTH CARE

PART A—GENERAL HEALTH

SEC. 201. ELIGIBILITY FOR PROSTHETIC DEVICES AND CERTAIN OTHER MEDICAL ITEMS.

(a) IN GENERAL.—Section 601(6)(A)(i) is amended by striking out "(except under the conditions described in section 612(f)(1)(A)(i) of this title)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date on which the Secretary of Veterans Affairs submits to the Committees on Veterans' Affairs of the Senate and House of Representatives copies of the Secretary's written determination that implementation of that amendment will not result in (1) substantial delay, or contribute substantially to delays, in the furnishing of prosthetic items in connection with the treatment of disabilities that are service connected (within the meaning of that term provided in section 101(16) of title 38, United States Code), or (2) the denial of such items in connection with the treatment of such disabilities.

SEC. 202. INCREASE IN MAXIMUM LIMITATIONS ON HOME HEALTH SERVICES.

Section 617(a)(2) is amended—

(1) in subparagraph (A), by striking out "$2,500" and inserting in lieu thereof "$5,000"; and

(2) in subparagraph (B), by striking out "$600" and inserting in lieu thereof "$1,200".

SEC. 203. EXPANDED SERVICES FOR HOMELESS VETERANS.

(a) ASSESSMENT AND PLAN.—(1)(A) The Secretary of Veterans Affairs shall require the director of each medical center or the director of each regional benefits office to make an assessment of the needs of homeless veterans living within the area served by the director of the medical center concerned or the region of the director of the region concerned, as the case may be.

(B) Each assessment shall identify the needs of homeless veterans with respect to the following areas:

(i) Health care.

(ii) Education and training.

(iii) Employment.

(iv) Shelter.

(v) Counseling.

(vi) Outreach services.

(C) Each assessment shall also indicate the extent to which the needs referred to in clauses (i) through (vi) of subparagraph (B) are being met adequately by the programs of the Department of Veterans Affairs, of other departments and agencies of the Federal Government, of State and local governments, and of nongovernmental organizations.

(D) Each assessment shall be made in consultation with all facilities of the Department of Veterans Affairs serving veterans in the appropriate service area and with community-based organizations that have experience working with homeless persons in that area.

(E) Each assessment shall be carried out in accordance with uniform procedures and guidelines prescribed by the Secretary.

(2)(A) The director of each medical center shall develop a plan for each of fiscal years 1992, 1993, and 1994 for the provision of outreach services and other services to meet the needs that are identified in the assessment referred to in paragraph (1)(B) on the part of homeless veterans in the area served by the medical center concerned. The director of each medical center shall develop such plans in consultation with the director of the appropriate regional benefits office, the heads of other facilities of the Department of Veterans Affairs, and the Director for Veterans' Employment and Training within the State concerned.

(B) Each plan developed pursuant to subparagraph (A) shall—

(i) describe the actions to be taken by the Department of Veterans Affairs to meet, directly or otherwise, those needs of homeless veterans that are identified in the assessment referred to in paragraph (1) as not being adequately met by existing programs; and

(ii) provide that the director of the medical center concerned or other official of the Department of Veterans Affairs will take appropriate action to meet those needs, to the maximum extent practicable, through existing programs and available resources.

(C) The director of each medical center shall coordinate the development of the plan for the area served by the medical center concerned with other programs of the Department of Veterans Affairs, other departments and agencies of the Federal Government, State and local governments, and community-based organizations and other private entities that provide services to homeless persons.

(D) Each plan shall include a list of all public and private programs that provide assistance to homeless persons or homeless veterans in the area concerned and shall describe the services offered by those programs.

(3) The director of each medical center shall be responsible for carrying out the plan developed with respect to the area served by that medical center. In carrying out such plan, the director shall take appropriate actions to seek to inform each homeless veteran, and each veteran who is at risk of becoming homeless (as determined by the director), of the services available to the veteran within the area served by the medical center.

(4) The director of each medical center shall disseminate to other departments and agencies of the Federal Government, all State and local governments, and all private entities that provide services to homeless persons or homeless veterans within the area served by the medical center information regarding the services provided to homeless veterans by the medical center or other facility of the Department of Veterans Affairs.

(b) PILOT PROGRAM FOR PROVIDING DOMICILIARY CARE FOR HOMELESS VETERANS.—(1) The Secretary shall conduct a pilot program to determine the effectiveness of providing, through existing community-based organiza-

tions, domiciliary care (including medical services) to homeless veterans eligible for such care from the Department of Veterans Affairs under other provisions of law. In carrying out the program, the Secretary may enter into contracts with community-based organizations that have demonstrated effectiveness in providing relevant services to homeless persons. The Secretary shall conduct the program at not more than 15 locations throughout the United States.

(2) In entering into contracts under this section, the Secretary shall give preference to community-based organizations that offer the most comprehensive care and services to homeless individuals, particularly services that meet needs identified in the assessments referred to in subsection (a)(1) as not being adequately met by existing programs.

(3) There is authorized to be appropriated to carry out this subsection $1,500,000 for each of fiscal years 1992, 1993, and 1994.

(4) If the Secretary determines that the pilot program conducted pursuant to paragraph (1) is meeting effectively the domiciliary care needs of homeless veterans and that additional funds are needed for that program, the Secretary may transfer funds appropriated to carry out section 801 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100-628; 102 Stat. 3257), as amended by subsection (e), to the account available to carry out the pilot program provided for in this subsection, except that no amount may be transferred in any fiscal year that would reduce the amount available for expenditure under such section 801 below an amount equal to the amount expended under that section in the preceding fiscal year. Funds transferred under this paragraph shall be available for the same period for which originally appropriated.

(c) AUTHORITY TO ACCEPT DONATIONS FOR CERTAIN PROGRAMS.—The Secretary may accept donations of funds and services for the purposes of providing one-stop, non-residential services and mobile support teams and for expanding the medical services to homeless veterans eligible for such services from the Department of Veterans Affairs.

(d) DEFINITIONS.—As used in subsections (a), (b), and (c):

(1) The term "medical center" means a medical center of the Department of Veterans Affairs.

(2) The term "regional benefits office" means a regional benefits office of the Department of Veterans Affairs.

(3) The term "veteran" has the same meaning given such term by section 101(2) of title 38, United States Code.

(4) The term "homeless" has the same meaning given such term by section 103(a), as limited by section 103(c), of the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77; 101 Stat. 485).

(e) EXTENSION OF CERTAIN PROGRAMS FOR HOMELESS VETERANS.—(1) Section 801 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100-628; 102 Stat. 3257) is amended—

(A) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Veterans Affairs $30,000,000 for each of the fiscal years 1989 and 1990; $50,000,000 for fiscal year 1991; $57,500,000 for fiscal year 1992; and $65,000,000 for fiscal year 1993. Funds appropriated pursuant to this section shall be in addition to any funds appropriated pursuant to any other authorizations (whether definite or indefinite) for such fiscal years.";

(B) in subsection (b)—

(i) by inserting "(1)" after "DOMICILIARY CARE.—";

(ii) by striking out "50 percent" and inserting in lieu thereof "the amounts specified in paragraph (2)";

(iii) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively; and

(iv) by adding at the end the following new paragraph:

"(2) The amounts available for the purposes referred to in paragraph (1) are as follows:

"(A) For fiscal year 1989, $15,000,000.

"(B) For fiscal year 1990, $15,000,000.

"(C) For fiscal year 1991, $20,000,000.

"(D) For fiscal year 1992, $22,500,000.

"(E) For fiscal year 1993, $25,000,000."; and

(C) in subsection (c)—

(i) by inserting "(1)" after "HOMELESS VETERANS.—";

(ii) by striking out "50 percent" and inserting in lieu thereof "the amounts specified in paragraph (2)"; and

(iii) by adding at the end the following new paragraph:

"(2) The amounts available for the purposes referred to in paragraph (1) are as follows:

"(A) For fiscal year 1989, $15,000,000.

"(B) For fiscal year 1990, $15,000,000.

"(C) For fiscal year 1991, $30,000,000.

"(D) For fiscal year 1992, $35,000,000.

"(E) For fiscal year 1993, $40,000,000.".

(2) EXTENSION OF PROGRAM FOR MENTALLY ILL HOMELESS VETERANS.—Section 115(d) of the Veterans' Benefits and Services Act of 1988 (38 U.S.C. 612 note) is amended by striking out "1992" and inserting in lieu thereof "1994".

(f) REPORT.—Not later than February 1, 1993, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing an evaluation of the programs referred to in subsections (a), (b), and (c).

SEC. 204. EXTENSION OF PILOT PROGRAM OF MOBILE HEALTH-CARE CLINICS.

Section 113(b) of the Veterans' Benefits and Services Act of 1988 (38 U.S.C. 612 note) is amended—

(1) by striking out "and 1990" and inserting in lieu thereof a comma and "1990, 1991, 1992, and 1993"; and

(2) by adding at the end the following new sentence: "Funds appropriated to carry out the pilot program authorized by this section shall remain available until expended.".

SEC. 205. ADVISORY COMMITTEE ON PROSTHETICS AND SPECIAL-DISABILITIES PROGRAMS.

(a) ESTABLISHING OF ADVISORY COMMITTEE.—Chapter 3 is amended—

(1) by redesignating sections 223 and 224 as sections 224 and 225, respectively; and

(2) by inserting after section 222 the following new section 223:

"§223. Advisory Committee on Prosthetics and Special-Disabilities Programs

"(a)(1) The Secretary shall establish an advisory committee to be known as the Advisory Committee on Prosthetics and Special-Disabilities Programs (hereinafter in this section referred to as the 'Committee').

"(2) The members of the Committee shall be appointed by the Secretary and shall include—

"(A) appropriate representatives of veterans who use prosthetic devices;

"(B) individuals who are recognized experts in the fields of prosthetics engineering;

"(C) individuals engaged in prosthetics research;

"(D) individuals engaged in rehabilitative medicine;

"(E) individuals engaged in the clinical treatment of individuals who are users of prosthetic devices;

"(F) individuals engaged in clinical treatment in the Department's special-disabilities programs; and

"(G) such other individuals with pertinent expertise or experience as the Secretary may determine appropriate.

"(3) The Committee may also include, as ex officio members, individuals appointed from the Department.

"(4) The Secretary shall determine the total number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that the term of office of any such member may not exceed three years.

"(b)(1) It shall be the function of the Committee to advise the Secretary and the Chief Medical Director on all matters related to—

"(A) prosthetics and special-disabilities programs administered by the Secretary;

"(B) the coordination of programs of the Department for the development and testing of, and for information exchange regarding, prosthetic devices;

"(C) the coordination of Department and non-Department programs that involve the development and testing of prosthetic devices; and

"(D) the adequacy of funding for the prosthetics and special-disabilities programs of the Department.

"(2) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee on the matters described in paragraph (1) of this subsection.

"(c) Not later than January 15 of 1992, 1993, 1994, and 1995, the Committee shall submit to the Secretary and the Committees on Veterans Affairs' of the Senate and House of Representatives a report on the effectiveness of the prosthetics and special-disabilities programs administered by the Secretary during the preceding fiscal year. Not more than 30 days after the date on which any such report is received by the Secretary, the Secretary shall submit a report to such committees commenting on the report of the Committee.

"(d) As used in this section, the term 'special-disabilities programs' includes all programs administered by the Secretary for spinal-cord-injured veterans, blind veterans, veterans who have lost or lost the use of extremities, hearing-impaired veterans, and other veterans with serious incapacities in terms of daily life functions.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 3 is amended by striking out the items relating to sections 223 and 224 and inserting in lieu thereof the following:

"223. Advisory Committee on Prosthetics and Special-Disabilities Programs.

"224. Rulemaking: procedures and judicial review.

"225. Administrative settlement of tort claims.".

SEC. 206. SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITIES AFFECTING PROCREATION.

(a) DEFINITION OF "MEDICAL SERVICES".—Clause (A) of section 601(6), as amended by section 201 of this Act, is further amended to read as follows:

"(A)(i) surgical services, (ii) services to achieve pregnancy in a veteran or a veteran's spouse when such services are necessary to overcome a service-connected disability impairing a veteran's procreative ability (but only if such services are furnished by contract, except for services which the Chief Medical Director determines that Department of Veterans Affairs facilities are fully capable of furnishing in a cost-effective manner), (iii) dental services and appliances as described in sections 610 and 612 of this title, (iv) optometric and podiatric services, (v) (in the case of a person otherwise receiving care or services under this chapter) preventive health-care services as defined in section 662 of this title, (vi) wheelchairs, artificial limbs, trusses and similar appliances, special clothing made

necessary by the wearing of prosthetic appliances, and such other supplies or services as the Secretary determines to be reasonable and necessary, and (vii) travel and incidental expenses pursuant to the provisions of section 111 of this title; and".

(b) ADVISORY COMMITTEE.—The Chief Medical Director of the Department of Veterans Affairs shall appoint an advisory committee to advise the Chief Medical Director on the exercise of authority to furnish services described in subclause (ii) of section 601(6)(A) of title 38, United States Code, as added by subsection (a). Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory committee appointed under this subsection.

SEC. 207. PREVENTIVE MEDICINE.

(a) EXTENSION OF PILOT PROGRAM.—Section 663(a)(1) is amended to read as follows:

"(a)(1) In order to carry out the purpose of this subchapter, the Secretary shall, through fiscal year 1996—

"(A) furnish annually at least two preventive health-care services that the Secretary determines to be feasible and appropriate to any veteran being furnished care or services under section 610(a)(1) or 612(a) (1) or (2) of this title; and

"(B) implement annually at each Department of Veterans Affairs health-care facility a major preventive health-care and health-promotion initiative for such veterans.".

(b) LIMIT ON EXPENDITURES.—Section 663(c) is amended—

(1) by striking out "or" after "1983,"; and

(2) by striking out the period at the end and inserting in lieu thereof ", more than $16,000,000 in fiscal year 1992, more than $17,000,000 in fiscal year 1993, more than $18,000,000 in fiscal year 1994, more than $19,000,000 in fiscal year 1995, or more than $20,000,000 in fiscal year 1996.".

(c) DIRECTOR OF PREVENTIVE HEALTH-CARE AND HEALTH-PROMOTION PROGRAMS.—Section 663 is amended by adding at the end the following new subsection:

"(d)(1) The Chief Medical Director shall designate an official in the Veterans Health Administration to act as the Director of Preventive Health-Care and Health-Promotion Programs.

"(2) The Director of Preventive Health-Care and Health-Promotion Programs shall prepare guidance regarding, and be responsible for coordinating, evaluating, and advising the Chief Medical Director on, all activities carried out under this subchapter.".

(d) REPORTS.—Section 664 is amended to read as follows:

"(a) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives—

"(1) not later than February 1, 1994, an interim report on the experience under the program provided for by this subchapter; and

"(2) not later than February 1, 1996, a final report on the experience under the program.

"(b) Each report submitted pursuant to subsection (a) of this section shall include, with respect to the experience under the program through September 30 of the year preceding the deadline for submission of such report specified in subsection (a)—

"(1) a description of the types of services that have been furnished pursuant to section 663(a)(1)(A) of this title and the number of veterans who received such services;

"(2) a description of the preventive health-care and health-promotion initiatives that were implemented pursuant to section 663(a)(1)(B) of this title and the number of veterans who have been served through such initiatives;

"(3) a description of the types of preventive health-care services that have been furnished pursuant to sections 610 and 612 of this title and the number of veterans who received such services;

"(4) a description of activities conducted pursuant to section 663(a)(2) of this title;

"(5) an assessment of the results of the program; and

"(6) any plans for administrative action, and any recommendations for legislation, that the Secretary considers appropriate.".

(e) CONFORMING AND CLARIFYING AMENDMENTS.—(1) Section 661(1) is amended by striking out ", including veterans with service-connected disabilities" and all that follows through "disability under this chapter,".

(2) Clauses (1) and (2) of section 662 are amended to read as follows:

"(1) periodic medical examinations (including screenings for high blood pressure, glaucoma, colorectal cancer, and cholesterol) and dental examinations;

"(2) patient health education (including education about nutrition, stress management, physical fitness, and smoking cessation);".

SEC. 208. ASSISTIVE DOGS FOR CERTAIN DISABLED VETERANS.

(a) AUTHORITY TO PROVIDE ASSISTIVE DOGS.—Section 614 is amended by adding at the end the following new subsection:

"(c)(1) The Secretary may provide—

"(A) a service dog to a quadriplegic veteran who has a service-connected disability; and

"(B) a signal dog to a veteran who has a service-connected hearing impairment and is in need of the assistance of such a dog.

"(2) The Secretary may pay travel and incidental expenses to veterans referred to in paragraph (1), under the terms and conditions set forth in section 111 of this title, for travel to and from such veteran's homes that are incurred in becoming adjusted to the service dogs and signal dogs referred to in such paragraph.

"(3) For the purposes of this subsection:

"(A) The term 'service dog' means a dog trained to assist quadriplegic individuals in the performance of daily living tasks.

"(B) The term 'signal dog' means a dog trained to provide hearing assistance to deaf persons.".

(b) TECHNICAL CORRECTIONS.—Section 614(b) is amended by striking out "(under the terms and conditions set forth in section 111 of this title) to and from their homes and" and inserting in lieu thereof ", under the terms and conditions set forth in section 111 of this title, for travel to and from such veteran's homes that are".

SEC. 209. PROSTHETIC SERVICES REPORT.

Not later than January 15, 1992, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

(1) the Secretary's evaluation of the reasons for the backlog that occurred in the procurement of prosthetic appliances in fiscal year 1989, and for the failure to furnish prosthetic appliances in accordance with the priority established in section 612(i) of title 38, United States Code; and

(2) a description of the actions that the Secretary has taken and plans to take to prevent a recurrence of—

(A) the failure to furnish prosthetic appliances in accordance with such priority, including a schedule for any such planned actions; and

(B) the accumulation of a significant backlog in the procurement of prosthetic appliances.

SEC. 210. REPEAL OF AUTHORITY TO FURNISH TOBACCO TO VETERANS RECEIVING HOSPITAL OR DOMICILIARY CARE.

(a) IN GENERAL.—Section 615 is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by striking out the item relating to section 615.

SEC. 211. DEVELOPMENT OF RECOMMENDED LEGISLATION FOR THE ELIMINATION OF INCONSISTENCIES IN CERTAIN VETERANS BENEFITS LAWS.

(a) REQUIREMENT TO ESTABLISH TASK FORCE.—The Secretary of Veterans Affairs shall establish a task force to recommend policies and legislation for the elimination of inconsistencies among provisions of law relating to veterans' eligibility for certain health-care benefits.

(b) COMPOSITION OF TASK FORCE.—The task force shall be composed of the following:

(1) Employees of the Department of Veterans Affairs involved in the administration of programs affected by the inconsistencies in law referred to in subsection (a).

(2) Representatives of organizations concerned with the administration of such programs, as determined by the Secretary.

(c) RESPONSIBILITIES OF TASK FORCE.—The task force shall—

(1) identify inconsistencies among sections 601(6), 612, 614, 617, and 619 of title 38, United States Code, and the implementation of such sections;

(2) after consultation with appropriate representatives of veterans, develop policy recommendations and legislative proposals for the elimination of any such inconsistencies; and

(3) not later than the date specified by the Secretary, submit to the Secretary a report containing (A) descriptions of the inconsistencies identified by the task force, (B) the policies and legislative proposals recommended by the task force for the elimination of such inconsistencies, and (C) the reasons for each such recommendation.

(d) ACTION BY THE SECRETARY.—The Secretary shall—

(1) review the report submitted by the task force; and

(2) either (A) approve the recommendations for legislation contained in the report, or (B) with respect to any such recommendations that the Secretary does not approve, recommend, or decline to recommend, alternative legislative proposals that the Secretary considers appropriate for the elimination of the inconsistencies identified by the task force.

(e) SUBMISSION OF RECOMMENDATIONS TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives—

(1) the report submitted to the Secretary by the task force; and

(2) a report containing—

(A) any legislation recommended by the Secretary for the elimination of the inconsistencies identified by the task force;

(B) an analysis of any legislation recommended by the Secretary; and

(C) the reasons for any differences between any legislation recommended by the Secretary and the legislation recommended by the task force.

SEC. 212. ELIGIBILITY OF FORMER PRISONERS OF WAR FOR OUTPATIENT MEDICAL SERVICES.

Section 612(a)(1) is amended—

(1) at the end of clause (B), by striking out "and";

(2) at the end of clause (C), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new clause:

"(D) to any former prisoner of war for any disability.".

SEC. 213. PILOT PROGRAM FOR FURNISHING ASSISTIVE MONKEYS TO CERTAIN VETERANS.

(a) REQUIREMENT FOR PILOT PROGRAM.—During fiscal years 1992, 1993, 1994, and 1995, the

Secretary of Veterans Affairs shall conduct a pilot program under which the Secretary shall—

(1) furnish assistive monkeys to quadriplegic veterans who have service-connected disabilities rated 50 percent or more; and

(2) facilitate the furnishing of assistive monkeys to other quadriplegic veterans.

(b) SELECTION OF VETERAN-PARTICIPANTS.—(1) In determining whether to furnish an assistive monkey to a veteran, or to facilitate the furnishing of an assistive monkey to a veteran, under the pilot program, the Secretary shall (A) consider the extent to which the veteran needs and can benefit from the assistance of the monkey, and (B) provide a preference for veterans who have service-connected quadriplegia.

(2) The Secretary shall approve a veteran for participation in the pilot program only upon the Secretary's determination that the veteran is well-suited for—

(A) carrying out the responsibilities involved in the care of the monkey; and

(B) effectively using the monkey for assistance in performing the veteran's daily living tasks.

(c) ADMINISTRATIVE MATTERS.—(1) The Secretary is authorized to enter into contracts for the furnishing of assistive monkeys under subsection (a). Under such contracts the Secretary may make advance payments for the furnishing of the monkeys before receipt of the monkeys and may either reimburse the provider of such monkeys for the costs of training the monkeys or, subject to such terms and conditions as the Secretary determines are necessary to protect the interests of the Government, make advance payments for such costs before the costs are incurred.

(2) Ownership of an assistive monkey furnished to a veteran under the pilot program shall be determined in accordance with a contract between the provider of the monkey and the veteran.

(3) The Secretary shall provide for the protection of the welfare of assistive monkeys furnished veterans under the pilot program.

(d) EVALUATION AND REPORT.—(1) The Secretary shall evaluate the conduct of the pilot program, the nature and extent of the benefit to veterans furnished assistive monkeys under the program (including any benefits related to employment), the costs and cost-effectiveness of furnishing such monkeys to quadriplegic veterans, and the effects of such program on the recruitment and retention of paid primary caregivers for veterans receiving monkeys and on the morale of unpaid primary caregivers for such veterans.

(2) Not later than February 1, 1995, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the pilot program. The report shall contain—

(A) the results of the evaluation carried out under paragraph (1), including descriptions of the procedures and criteria used to select veterans to receive assistive monkeys, the nature and extent of the benefit that the veterans received from the assistance of such monkeys, and the amounts and types of costs incurred by the Department of Veterans Affairs in the conduct of the program;

(B) the Secretary's views on the relationship between the furnishing of an assistive monkey to a veteran and the payment to a veteran of (i) an aid and attendance allowance under section 314(r) of title 38, United States Code, or (ii) an annual rate of pension under section 521 of such title based on the veteran's need of regular aid and attendance; and

(C) any recommendations that the Secretary considers appropriate regarding whether the pilot program should be continued or whether the authority to furnish assistive monkeys to quadriplegic veterans should be made permanent.

(e) EVALUATION OF PRIVATE ASSISTIVE MONKEY PLACEMENT PROGRAMS.—Before furnishing assistive monkeys to veterans under the pilot program, the Chief Medical Director of the Department of Veterans Affairs shall provide for the conduct of an independent evaluation of the way that assistive monkeys would be treated during training and placement under the pilot program. The Chief Medical Director shall ensure that the person or organization performing the evaluation consults with representatives of appropriate animal welfare organizations prior to conducting the evaluation.

(f) DEFINITIONS.—For the purposes of this section—

(1) the terms "veterans" and "service-connected" have the meanings given those terms in paragraphs (2) and (16), respectively, of section 101 of title 38, United States Code; and

(2) the term "assistive monkey" means a monkey that is specially trained to assist in the performance of daily living tasks for quadriplegic individuals.

PART B—HEALTH-CARE PERSONNEL

SEC. 221. PAY ENHANCEMENTS FOR CERTAIN HEALTH-CARE PERSONNEL.

Section 7454(b) is amended by striking out "or occupational therapists," and inserting in lieu thereof "occupational therapists, or any other health-care personnel furnishing direct care to patients or providing services incident to the furnishing of direct care to patients,".

SEC. 222. SPECIAL RATES CAP.

Section 7455(c) is amended—

(1) by inserting "(1)" after "(c)";

(2) by inserting "by two times" after "exceed" the first place it appears; and

(3) by inserting at the end the following new paragraph:

"(2) Whenever the amount of an increase under subsection (a)(1) results in a rate of basic pay for a position being equal to or greater than the amount that is 94 percent of the maximum amount permitted under paragraph (1), the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the increase and the amount thereof.".

SEC. 223. RATES OF PAY FOR CERTAIN PSYCHOLOGISTS.

Notwithstanding any other provision of law, the Secretary of Veterans Affairs, not later than 90 days after the date of the enactment of this Act, shall utilize the authority provided in section 7455 of title 38, United States Code, to increase the rates of pay for clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accredited authority recognized by the Secretary unless the Chief Medical Director of the Department of Veterans Affairs determines that such psychologists are not needed to furnish appropriate quality of psychological services for veterans. The amount by which such rate of pay shall be increased shall be the amount determined by the Secretary, upon the recommendation of the Chief Medical Director, to be necessary to make the pay for such psychologists competitive with the pay of psychologists with the same qualifications and credentials serving in non-Department of Veterans Affairs capacities comparable to the Department capacities in which the Department psychologists are serving.

SEC. 224. CHILD-CARE SERVICES.

(a) ASSESSMENTS OF EMPLOYEE NEEDS FOR CHILD-CARE SERVICES.—(1) In order to provide for adequate planning for the availability of child-care services for children of Department of Veterans Affairs employees, the Secretary of Veterans Affairs shall require the director of each Department of Veterans Affairs medical center and regional office to—

(A) assess the needs of such employees for child-care services; and

(B) submit an annual report to the Secretary containing—

(i) the director's findings relating to the needs of such employees for such services and the extent to which such services are available to meet such needs, and

(ii) a proposal (including a schedule) for meeting fully any unmet needs or, if the director determines that it is impracticable to meet such needs fully, a detailed explanation of the reasons for such determination and a proposal (including a schedule) for meeting as many of such needs as is practicable..

(2) In making the assessment referred to in paragraph (1), the director shall consult with appropriate representatives of the employees at the center or office.

(3) The annual report referred to in this subsection shall be submitted not later than March 1 of each year.

(b) TECHNICAL AMENDMENT.—Subsection (b) of section 7809 is amended by striking out "of this section" in the final sentence.

TITLE III—MINORITY AFFAIRS

SEC. 301. ASSIGNMENT OF MINORITY ISSUES TO AN ASSISTANT SECRETARY OF VETERANS AFFAIRS.

(a) POSITION AND FUNCTIONS OF ASSISTANT SECRETARY.—Section 4 of the Department of Veterans Affairs Act (Public Law 100-527; 102 Stat. 2638) is amended by adding at the end of subsection (b) the following new paragraph:

"(11) The review and assessment of the effects of policies, regulations, and programs and other activities of the Department on minority veterans and the coordination and monitoring of policies facilitating access of such veterans to services and benefits provided under laws administered by the Secretary.".

(b) "MINORITY VETERANS" DEFINED.—Section 4 of such Act is further amended by adding at the end the following new subsection:

"(g) DEFINITIONS.—As used in this section:

"(1) The term 'minority veterans' means veterans who are—

"(A) black individuals;

"(B) Native Americans;

"(C) Hispanic-Americans;

"(D) Asian-Americans;

"(E) Pacific-Islander-Americans; and

"(F) women.

"(2) The term 'veteran' has the meaning given that term in section 101(2) of title 38, United States Code.

"(3) The term 'Native American' means an Indian, a Native Hawaiian, or an Alaska Native.

"(4) The term 'Indian' has the meaning given that term in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(a)).

"(5) The term 'Native Hawaiian' has the meaning given that term in section 815(3) of the Native American Programs Act of 1974 (42 U.S.C. 2992c(3)).

"(6) The term 'Alaska Native' has the meaning given the term 'Native' in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

"(7) The term 'Asian-American' means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent of Asia.

"(8) The term 'Pacific-Islander-American' means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Pacific Islands.".

SEC. 302. REESTABLISHMENT OF THE ADVISORY COMMITTEE ON NATIVE-AMERICAN VETERANS.

(a) ESTABLISHMENT.—Effective October 1, 1991, the Advisory Committee on Native-Amer-

ican Veterans established by section 19032 of the Veterans' Health-Care Amendments of 1986 (title XIX of Public Law 99-272; 100 Stat. 388) is reestablished.

(b) INCORPORATION OF PROVISIONS OF PRIOR LAW.—Subsections (b) through (e) and (g) of section 19032 of the Veterans' Health-Care Amendments of 1986 shall apply to the Advisory Committee on Native-American Veterans reestablished by subsection (a).

(c) REPORTS.—(1) Not later than March 31, 1992, and March 31, 1993, the Committee shall submit to the Secretary of Veterans Affairs a report containing the findings and any recommendations of the Committee regarding the matters described in section 19032(b) of the Veterans' Health-Care Amendments of 1986 that were examined and evaluated by the Committee during the fiscal year preceding the fiscal year in which the report is submitted.

(2) Not later than 60 days after receiving each such report, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comments and recommendations concerning the report that the Secretary considers appropriate.

(d) TERMINATION.—The Committee shall expire 90 days after the date on which the second report is transmitted by the Committee pursuant to subsection (c).

Mr. DECONCINI. Mr. President, the distinguished chairman of the Veterans' Affairs Committee, Senator CRANSTON, has asked me today, as the ranking Democratic member, to manage this particular legislation, and I am pleased to do so. I urge my colleagues to pay a little bit of attention and to unanimously approve S. 869, the Veterans Health Care Amendments Act of 1991, as it would be amended by an amendment I will propose, which has the support of the full committee, a little bit later.

Mr. President, this bill contains three titles and addresses many important aspects of veterans' health care. The committee report describes each provision in great detail, and Senator CRANSTON has prepared a detailed statement about selected provisions of the bill which I will insert in the RECORD at the conclusion of my remarks, and I submit that everyone and staff would do well to heed that and read that report if they have time.

The committee has put together a very good bill that deals fairly and reasonably with some of the most pressing health-care problems facing veterans and makes some needed improvements in VA's health-care personnel system. I will take a few minutes to comment on certain provisions of the bill about which amendments to strike were offered in committee and which I believe will be the subject of debate today. Aside from disagreement on these very few provisions, I am aware of no opposition to the bill. Many of the provisions in the bill, including the few I will discuss relating to posttraumatic stress disorder and the vet centers have previously been considered and passed by the Senate.

Let me discuss posttraumatic stress disorder. We on the Veterans' Affairs Committee are well aware of the massive problem of this PTSD among combat veterans. PTSD is a psychiatric disorder that afflicts some people after they have been exposed to an extraordinarily traumatic event, such as combat. It can result in severe impairment and affect nearly every aspect of one's life. It is characterized by nightmares, flashbacks, intense distress, persistent avoidance of things associated with the event, and estrangement from others, including close friends and family.

In 1983, Congress mandated a study of the incidence of PTSD and psychological readjustment problems among Vietnam veterans. That study cost $10 million and took 4 years to complete. Its ultimate findings were that nearly one-half million Vietnam veterans suffered from full-blown cases of PTSD and that another 350,000 Vietnam veterans suffered from PTSD symptoms.

The study also reported a very low utilization of the VA medical health services by those suffering from current PTSD. Only 20 percent had ever used the VA mental health services and only 10 percent had used them within the previous 12 months.

Mr. President, the Veterans' Administration has acknowledged the validity of these alarming findings but has not responded with the urgency that I and a majority of the committee believe they should have. Waiting lines at PTSD treatment units, sometimes for as long as 1 year, persist, enhancements in the VA's PTSD programs have resulted only after Congress has earmarked appropriations for those particular specific purposes. This is very disturbing. The VA system exists precisely for such service-related injuries, and yet it is Congress that has been mandating it and not the VA coming forward on their own, as I believe is their obligation and duty.

Mr. President, if the study had found that such a great number of Vietnam war veterans suffered from untreated serious physical wounds related to combat, I am certain that the uproar would have been loud and sustained, the response would have been quick, and the money would have been found to provide outreach and the care that is needed, even without coming to the Congress. But this is a mental health problem and it appears that a psychiatric disorder, even one of epidemic proportions, may be dismissed more easily than could physically disabling problems. Many of us on the committee view the tepid response by VA to this enormous problem nearly as alarming as the problem itself.

Section 103 of the bill would require the VA to furnish PTSD care to veterans on a priority basis if they are diagnosed. Mr. President, section 103 of the bill would require the VA to furnish PTSD care to veterans on a priority basis if the PTSD is related to combat service. The diagnosis would have to be made by a designated VA mental health professional. The veteran's service in a combat theater would also have to be verified by the VA. If both of these occur the VA would have to provide PTSD care for that veteran. The only difference is that formal adjudication would not be required to move forward on the care.

Mr. President, the Senate has passed provisions very similar to section 103 in both the 100th and 101st Congress, and each time there were those who suggested that the approach was misguided and would set a terrible precedent for legislating on the basis of a particular disorder. That position is both factually wrong, as to the precedent, and itself much misguided from a policy standpoint. Current law includes over 70 conditions that are presumed to be service connected if developed during a specific period of time, and thus provide automatic eligibility for priority health care.

As to the policy at issue, for me, it is clear that a combat-theater veteran diagnosed as suffering from PTSD related to that service is precisely the type of person and the type of problem that the VA health-care system should serve and should give a priority to.

I strongly disagree with any contention that the policy at issue is congressional micromanagement or misplaced priorities. At issue is the responsiveness of the veterans health-care system and, really, of the U.S. Government to a problem that is so clearly—in this case, of what combat-theater veterans face—related to their military service. There is nothing that we could be more involved than addressing such an issue today. I challenge any of my colleagues to identify an area of the VA health-care system where there exists such a tremendous unmet need for the treatment of a condition related to the service.

Unfortunately, the most obvious arguments for this provision have been made by the chronic long waits for the PTSD treatment, the years lost by veterans treating themselves with alcohol or drugs for the pain they feel, and the consistent findings of clinicians and researchers as to the enormity of this problem among combat veterans.

PTSD is not unique to Vietnam combat veterans, though they were the subject of the most comprehensive study ever done. The committee report cites numerous other studies related to World War II and the Korean war veterans which all are related to PTSD.

Mr. President, this is clearly a much needed, overdue provision, and I hope the Senate will indeed pass that without great delay.

VET CENTER COUNSELING ENTITLEMENT

Mr. President, section 104 of the committee bill would expand entitlement for counseling at vet centers to include World War II and Korea veterans who served in a theater of combat oper-

ations. Since 1987, the committee has reported, and the Senate has passed twice, legislation to allow vet centers to provide for counseling for all combat-theater veterans. In March, Congress enacted legislation in the Persian Gulf supplemental authorization bill to expand entitlement for vet-center counseling to post-Vietnam-era combat-theater veterans.

Mr. President, earlier this year, the administration partially reversed its opposition to expanding the entitlement for readjustment counseling for post-Vietnam-era combat-theater veterans. In fact, the administration requested legislation that was nearly identical to the language that the committee reported and the Senate passed 3 years ago. However, its proposal and the recently enacted legislation does not address World War II and Korea veterans. Many World War II and Korea veterans already seek help at vet centers. Annual VA surveys indicate that vet centers see approximately 700 to 1,000 World War II and Korea veterans for the first time each month.

These 8,000 to 12,000 World War II and Korean war veterans who seek services at vet centers each year are a clear indication of the need for this provision. VA is not authorized to treat these veterans under current law, and does not conduct any outreach at all to attract them.

In committee, opponents of this provision suggested that World War II and Korean war veterans have been back too long to require readjustment counseling which, I note, is a term not used in this provision. Aside from semantics, the opponents of this provision simply do not believe that older veterans need services provided at vet centers. The number of unauthorized visits by older veterans, and the several clinical studies and research papers cited in the committee report regarding PTSD in older veterans indicates precisely the opposite.

Mr. President, it is true that the vet centers were established to address the specific needs of Vietnam veterans and, in that mission, they have done and continue to do excellent work. However, over the past 11 years, they also have developed highly professional, motivated staff who have tremendous experience helping veterans cope with psychological difficulties related to wartime service. Vet centers have clearly demonstrated their value and we have certainly learned enough about the psychological effects of wartime military service to agree that older combat-theater veterans should be able to go to them for help. This is an excellent provision and I am very pleased that the Senate is considering this legislation today.

COMMITTEE MODIFICATION TO THE COMMITTEE SUBSTITUTE

(Purpose: To revise certain pay authorities to physician and nonphysician personnel of the Department of Veterans Affairs, to make technical corrections, and for other purposes)

Mr. DECONCINI. Mr. President, I would like to discuss the committee modification and, on behalf of Senator CRANSTON and the committee, I send to the desk a committee modification of the committee substitute and ask that it be reported.

The PRESIDING OFFICER. The committee retains the right to modify the amendment. The bill is modified accordingly.

The committee modification is as follows:

On page 16, line 22, strike out "602" and insert in lieu thereof "1702".

On page 17, line 7, strike out "sections 610(a)(1)(A) and 612(a)(1)(A)" and insert in lieu thereof "sections 1710(a)(1)(A) and 1712(a)(1)(A)".

On page 18, line 6, strike out "602" and insert in lieu thereof "1702".

On page 18, in the matter between lines 10 and 11, strike out "602" and insert in lieu thereof "1702".

On page 18, line 12, strike out "612A" and insert in lieu thereof "1712A".

On page 18, line 20, strike out "602(b)" and insert in lieu thereof "1702(b)".

On page 18, line 24, strike out "612A" and insert in lieu thereof "1712A".

On page 21, line 16, strike out "612A(j)(1)" and insert in lieu thereof "1712A(j)(1)".

On page 23, line 25, strike out "612A" and insert in lieu thereof "1712A".

On page 24, line 4, strike out "612A" and insert in lieu thereof "1712A".

On page 25, line 4, strike out "612A" and insert in lieu thereof "1712A".

On page 25, line 11, strike out "612A" and insert in lieu thereof "1712A".

On page 27, line 16, strike out "612A" and insert in lieu thereof "1712A".

On page 27, line 21, strike out "612A" and insert in lieu thereof "1712A".

On page 27, line 25, strike out "612A(e)" and insert in lieu thereof "1712A(e)".

On page 28, line 2, strike out "612A(e)," and insert in lieu thereof "1712A(e),".

On page 35, between lines 3 and 4, insert the following:

PART C—PROGRAM OF MARRIAGE AND FAMILY COUNSELING FOR CERTAIN VETERANS

SEC. 131. PROGRAM FOR FURNISHING MARRIAGE AND FAMILY COUNSELING.

(a) REQUIREMENT.—Subject to the availability of funds appropriated pursuant to the authorization in section 133 of this Act, the Secretary of Veterans Affairs shall conduct a program to furnish to the persons referred to in subsection (b) the marriage and family counseling services referred to in subsection (c). The Secretary shall commence the program not later than 30 days after the date of the enactment of this Act. The authority to conduct the program shall expire at the end of September 30, 1994.

(b) PERSONS ELIGIBLE FOR COUNSELING.—The persons eligible to receive marriage and family counseling services under the program are—

(1) veterans who were awarded a campaign medal for active-duty service during the Persian Gulf War and the spouses, children, and parents of such veterans; and

(2) veterans who are or were members of the reserve components who were called or ordered to active duty during the Persian Gulf War and the spouses, children, and parents of such members.

(c) COUNSELING SERVICES.—Under the program, the Secretary may provide marriage and family counseling that the Secretary determines, based on an assessment by a mental-health professional employed by the Department and designated by the Secretary (or, in an area where no such professional is available, a mental-health professional designated by the Secretary and performing services under a contract or fee arrangement with the Secretary) is necessary for the amelioration of psychological, marital, or familial difficulties that result from the active duty service referred to in subsection (b) (1) or (2).

(d) MANNER OF FURNISHING SERVICES.—(1) The Secretary shall furnish the marriage and family counseling services under the program as follows:

(A) By personnel of the Department of Veterans Affairs who are qualified to provide such counseling services.

(B) By appropriately certified marriage and family counselors employed by the Department.

(C) By qualified mental health professionals pursuant to contracts with the Department.

(2) The Secretary shall establish the qualifications required of personnel under subparagraphs (A) and (C) of paragraph (1) and shall prescribe the training, experience, and certification required of appropriately certified marriage and family counselors under subparagraph (B) of such paragraph.

(3) The Secretary may employ counselors to provide marriage and family counseling under paragraph (1)(B) and shall pay such counselors at the rates prevailing for such counseling among non-Department health-care professionals with similar training, experience, and certification in the locality in which such counselors provide such counseling, as determined by the Secretary.

(e) CONTRACT COUNSELING SERVICES.—(1) Subject to paragraphs (2) and (4), a mental health professional referred to in subsection (d)(1)(C) may furnish marriage and family counseling services to a person under the program as follows:

(A) For a period of not more than 15 days beginning on the date of the commencement of the furnishing of such services to the person.

(B) For a 90-day period beginning on such date if—

(i) the mental health professional submits to the Secretary a treatment plan with respect to the person not later than 15 days after such date; and

(ii) the plan and assessment made under subsection (a) are approved by an appropriate mental health professional of the Department designated for that purpose by the Chief Medical Director.

(C) For an additional 90-day period beginning on the date of the expiration of the 90-day period referred to in subparagraph (B) (or any subsequent 90-day period) if—

(i) not more than 30 days before the expiration of the 90-day period referred to in subparagraph (B) (or any subsequent 90-day period), the mental health professional submits to the Secretary a revised treatment plan containing a justification of the need of the person for additional counseling services; and

(ii) the plan is approved in accordance with the provisions of subparagraph (B)(ii).

(2)(A) A mental health professional referred to in paragraph (1) who assesses the

need of any person for services for the purposes of subsection (c) may not furnish counseling services to that person.

(B) The Secretary may waive the prohibition referred to in subparagraph (A) for locations (as determined by the Secretary) in which the Secretary is unable to obtain the assessment referred to in that subparagraph from a mental health professional other than the mental health professional with whom the Secretary enters into contracts under subsection (d)(1)(C) for the furnishing of counseling services.

(3) The Secretary shall reimburse mental health professionals for the reasonable cost (as determined by the Secretary) of furnishing counseling services under paragraph (1). In the event of the disapproval of a treatment plan of a person submitted by a mental health professional under paragraph (1)(B)(i), the Secretary shall reimburse the mental health professional for the reasonable cost (as so determined) of furnishing counseling services to the person for the period beginning on the date of the commencement of such services and ending on the date of the disapproval.

(4) The Secretary may authorize the furnishing of counseling in an individual case for a period shorter than the 90-day period specified in subparagraph (B) or (C) of paragraph (1) and, upon further consideration, extend the shorter period to the full 90 days.

(5)(A) For the purposes of this subsection, the term "treatment plan", with respect to a person entitled to counseling services under the program, must include—

(i) an assessment by the mental health professional submitting the plan of the counseling needs of the person described in the plan on the date of the submittal of the plan; and

(ii) a description of the counseling services to be furnished to the person by the mental health professional during the 90-day period covered by the plan, including the number of counseling sessions proposed as part of such services.

(B) The Secretary shall prescribe an appropriate form for the treatment plan.

(f) COST RECOVERY.—For the purposes of section 1729 of title 38, United States Code, marriage and family counseling services furnished under the program shall be deemed to be care and services furnished by the Department under chapter 17 of such title, and the United States shall be entitled to recover or collect the reasonable cost of such services in accordance with that section.

SEC. 132. DEFINITIONS.

For the purposes of this part, the terms "veteran", "child", "parent", "active duty", "reserve component", "spouse", and "Persian Gulf War" have the meanings given such terms in section 101(2), (4), (5), (21), (27), (31), and (33) of title 38, United States Code, respectively.

SEC. 133. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,000,000 for fiscal year 1991 and $10,000,000 for each of fiscal years 1992, 1993, and 1994 to carry out this part. Funds authorized to be appropriated under this section shall be considered to be emergency requirements for the purposes of section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)(i)), but may be obligated for the program conducted pursuant to section 131 of this Act only if the President designates an appropriation under this section as an emergency requirement pursuant to such section 251(b)(2)(D)(i).

SEC. 134. REPORTS.

(a) INTERIM REPORT.—Not later than January 1, 1993, the Secretary shall submit to Congress a report on the program conducted pursuant to section 131 of this Act. The report shall contain information regarding the persons furnished counseling services under the program, including—

(1) the number of such persons, stated as a total number and separately for each eligibility status referred to in section 131(b) of this Act;

(2) the age and gender of such persons;

(3) the manner in which such persons were furnished such services under the program; and

(4) the number of counseling sessions furnished to such persons.

(b) FINAL REPORT.—Not later than January 1, 1994, the Secretary shall submit to Congress a report on the program. The report shall contain updates of the information referred to in subsection (a) and a description and evaluation of the program and shall include such recommendations with respect to the program as the Secretary considers appropriate.

On page 35, line 9, strike out "601(6)(A)(i)" and insert in lieu thereof "1701(6)(A)(i)".

On page 35, line 11, strike out "612(f)(1)(A)(i)" and insert in lieu thereof "1712(f)(1)(A)(i)".

On page 36, line 3, strike out "617(a)(2)" and insert in lieu thereof "1717(a)(2)".

On page 43, line 21, strike out "612" and insert in lieu thereof "1712".

On page 44, line 7, strike out "612" and insert in lieu thereof "1712".

On page 44, beginning on line 17, strike out "Chapter 3" and all that follows through page 44, line 22, and insert in lieu thereof the following: "Chapter 5 is amended by adding at the end of subchapter III the following new section:".

On page 45, line 1, strike out "**223**" and insert in lieu thereof "**543**".

On page 47, beginning on 12, strike out "The table of sections" and all that follows through the matter above page 47, line 16, and insert in lieu thereof the following: "The table of sections at the beginning of chapter 5 is amended by adding after the item relating to section 542 the following:

"'543. Advisory Committee on Prosthetics and Special-Disabilities Programs.'".

On page 47, line 19, strike out "601(6)" and insert in lieu thereof "1701(6)".

On page 48, line 6, strike out "610 and 612" and insert in lieu thereof "1710 and 1712".

On page 48, line 21, strike out "601(6)(A)" and insert in lieu thereof "1701(6)(A)".

On page 49, line 3, strike out "663(a)(1)" and insert in lieu thereof "1763(a)(1)".

On page 49, beginning on line 9, strike out "610(a)(1) or 612(a)" and insert in lieu thereof "1710(a)(1) or 1712(a)".

On page 49, line 15, strike out "663(c)" and insert in lieu thereof "1763(c)".

On page 49, line 25, strike out "663" and insert in lieu thereof "1763".

On page 50, line 10, strike out "664" and insert in lieu thereof "1764".

On page 51, line 2, strike out "663(a)(1)(A)" and insert in lieu thereof "1763(a)(1)(A)".

On page 51, line 7, strike out "663(a)(1)(B)" and insert in lieu thereof "1763(a)(1)(B)".

On page 51, line 12, strike out "610 and 612" and insert in lieu thereof "1710 and 1712".

On page 51, line 15, strike out "663(a)(2)" and insert in lieu thereof "1763(a)(2)".

On page 51, line 22, strike out "661(1)" and insert in lieu thereof "1761(1)".

On page 52, line 1, strike out "662" and insert in lieu thereof "1762".

On page 52, line 13, strike out "614" and insert in lieu thereof "1714".

On page 53, line 9, strike out "614(b)" and insert in lieu thereof "1714(b)".

On page 53, line 24, strike out "612(i)" and insert in lieu thereof "1712(i)".

On page 54, line 12, strike out "615" and insert in lieu thereof "1715".

On page 54, line 15, strike out "615" and insert in lieu thereof "1715".

On page 55, line 11, strike out "601(6), 612, 614, 617, and 619" and insert in lieu thereof "1701(6), 1712, 1714, 1717, and 1719".

On page 57, line 5, strike out "612(a)(1)" and insert in lieu thereof "1712(a)(1)".

On page 60, line 7, strike out "314(r)" and insert in lieu thereof "1114(r)".

On page 60, line 9, strike out "521" and insert in lieu thereof "1521".

On page 61, between lines 10 and 11, insert the following new sections:

SEC. 214. EXTENSION OF CERTAIN TEMPORARY PROGRAMS.

(a) PROGRAM FOR TRIAL WORK PERIODS AND VOCATIONAL REHABILITATION.—Section 1163(a)(2)(B) is amended by striking out "January 31, 1992" and inserting in lieu thereof "December 31, 1992".

(b) PROGRAM OF VOCATIONAL TRAINING FOR NEW PENSION RECIPIENTS.—Section 1524(a)(4) is amended by striking out "January 31, 1992" and inserting in lieu thereof "December 31, 1992".

(c) PROTECTION OF HEALTH-CARE ELIGIBILITY.—Section 1525(b)(2) is amended by striking out "January 31, 1992" and inserting in lieu thereof "December 31, 1992".

SEC. 215. PROHIBITION AGAINST USE OF PRICES OF DRUGS PAID BY THE DEPARTMENT OF VETERANS AFFAIRS IN THE CALCULATION OF MEDICAID REBATES.

Section 519(a) of Public Law 102-139 is amended to read as follows:

"(a) the following shall not be used to calculate Medicaid rebates paid by drug and biological manufacturers:

"(1) Prices of drugs and biologicals paid by the Department of Veterans Affairs and prices of drugs and biologicals on contracts administered by the Department of Veterans Affairs.

"(2) Prices (after any rebate or discount) of drugs and biologicals paid pursuant to contracts entered into with States which include, as a basis for rebates or discounts, the prices referred to in clause (1);".

On page 64, between lines 8 and 9, insert the following new sections:

SEC. 225. SPECIAL PAY FOR CERTAIN PHYSICIANS AND DENTISTS BASED ON BOARD CERTIFICATION.

(a) FULL-TIME PHYSICIANS AND DENTISTS.—Section 7437(e)(1)(C) is amended by striking out "only for the special pay" and all that follows through the period and inserting in lieu thereof "for no special pay factors other than primary, full-time, length of service, and specialty or board certification.".

(b) PART-TIME PHYSICIANS AND DENTISTS.—Section 7437(e)(2)(C) is amended by striking out "only for the special pay" and all that follows through the period and inserting in lieu thereof "for no special pay factors other than primary, full-time, length of service, and specialty or board certification.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if enacted with the amendment made by section 102 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Public Law 102-40; 105 Stat. 187).

(d) AVAILABILITY OF FUNDS.—Expenses incurred for periods before October 1, 1991, by reason of the enactment of the amendments made by subsections (a) and (b) may be

charged to fiscal year 1992 appropriations for the same purpose.

SEC. 226. TRANSITION RULE FOR PAYMENT OF SPECIAL PAY UNDER CERTAIN SPECIAL PAY AGREEMENTS.

(a) TRANSITION RULE.—Section 104(d) of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Public Law 102-40; 105 Stat. 199) is amended by adding at the end the following: "In the case of a physician or dentist who was employed by the Department of Veterans Affairs on July 14, 1991, and who was ready and willing to enter into an agreement under such subchapter on such date, the agreement entered into by the physician or dentist shall take effect on that date without regard to the date of the approval of the agreement under the regulations prescribed to carry out such subchapter.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted with section 104 of such Act.

(c) AVAILABILITY OF FUNDS.—Expenses incurred for periods before October 1, 1991, by reason of the enactment of the amendment made by subsection (a) may be charged to fiscal year 1992 appropriations for the same purpose.

SEC. 227. AUTHORITY TO APPOINT NON-PHYSICIAN DIRECTORS TO THE OFFICE OF THE CHIEF MEDICAL DIRECTOR.

Section 7306(a) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph (7):

"(7) Such directors of such other professional or auxiliary services as may be appointed to suit the needs of the Department, who shall be responsible to the Chief Medical Director for the operation of their respective services.".

SEC. 228. EXPANSION OF DIRECTOR GRADE OF THE PHYSICIAN AND DENTIST PAY SCHEDULE.

Section 7404(b)(2) is amended in the first sentence by inserting ", or comparable position" before the period.

On page 67, below line 14, add the following new matter:

TITLE IV—MISCELLANEOUS

SEC. 401. CLARIFICATION OF PROHIBITION ON PAYMENT OF ATTORNEYS' FEES.

(a) IN GENERAL.—Section 5904(c) is amended—

(1) by inserting "(A)" after "(c)(1)";

(2) by redesignating paragraph (2) as subparagraph (B);

(3) in subparagraph (B) (as so redesignated), by striking out "paragraph (1)" and inserting in lieu thereof "subparagraph (A)"; and

(4) by adding at the end the following new paragraph:

"(2) The provisions of this subsection shall apply only to cases involving a claim for benefits submitted by any person applying for benefits under the laws administered by the Department, and such provisions shall not apply in cases in which the Government is proceeding against a person to collect an indebtedness or in which other attorneys' fee statutes apply.".

(b) APPLICATION OF PROHIBITION.—Section 3404(c) of title 38, United States Code, as in effect on November 17, 1988, shall apply only to cases involving a claim for benefits submitted by any person applying for benefits under the laws administered by the Department and shall not apply in cases in which the Government is proceeding against a person to collect an indebtedness or in which other attorneys' fee statutes apply.

Mr. DECONCINI. Mr. President, for the information of my colleagues, I will describe briefly the provisions of the committee modification. The provisions would:

First, correct problems encountered in the implementation of the VA Health-Care Personnel Act of 1991 by (a) requiring that physicians employed by VA on the day before the effective date of the act and who received special pay in only the categories of primary, full-time status, length of service, and board certification continue to receive at least as great an amount of special pay as they received prior to the effective date; and (b) requiring that physicians and dentists whose special-pay agreement was not approved until after the effective date of the new law be paid special pay retroactive to the effective date.

Second, authorize VA to appoint and pay under VA's title 38 authority nonphysician directors of clinical support services within the Veterans Health Administration, such as social work and prosthetics.

Third, amend section 5904 of title 38 to clarify that the prohibition against the payment of attorney's fees for representation in a proceeding before VA relating to VA benefits does not apply in the case of a veteran or other person who is confronted with an administrative debt-collection proceeding brought by VA or in other situations in which no claim for benefits is involved—such as constitutional challenges to VA regulations and Freedom of Information Act cases.

Fourth, amend section 1163 of title 38 to extend from January 31, 1992, through December 31, 1992, the temporary program for trial work periods and voluntary vocational rehabilitation evaluations for veterans receiving compensation at the rate paid totally disabled veterans based on a determination of individual employability.

Fifth, the temporary program of vocational training for certain pension recipients and the 3-year protection of veteran pensioners' VA health-care eligibility would also be extended through December 31, 1992.

Sixth, the committee modification includes a provision to perfect a provision just enacted in the fiscal year 1992 VA Appropriations Act. That provision removed the price VA pays for drugs from the best price calculation under a section of the Omnibus Budget Reconciliation Act of 1990 until June 30, 1992.

Under the OBRA provision, drug manufacturers are required to provide rebates to State Medicaid programs based upon the best prices available in the marketplace for drugs. The 1992 VA appropriations provision temporarily removed the price paid by VA from that best price calculation.

However, according to VA, drug companies are still unwilling to give VA lower drug prices. The reason they give is that they are concerned that they would be required, by some State laws or contracts with State programs, to offer the same price they give VA to certain non-Medicaid State programs. That price, in turn, would then become a best price for purposes of rebate calculations under OBRA.

It is not entirely clear that this concern is justified as a matter of law. However, the committee modification would perfect the VA appropriations provision so as to remove from the best price calculation the prices paid pursuant to contracts entered into with States which base the prices on the prices VA pays.

Seventh, and last, make technical corrections to the text of the bill as reported.

Mr. President, in closing, I thank the committee's ranking Republican member, Senator SPECTER, who has spent literally hours in hearings and time with staff preparing this particular bill that is before us. He has labored very diligently on this legislation, and the other members of the committee, too, who have donated a great deal of time and effort to see this measure is before us today.

I also express my gratitude for their work on this legislation to the committees minority staff, Carrie Gavora, Yvonne Santa Anna, Bill Tuerk, and Tom Roberts, and for all their help to this side, majority staff members, Janet Coffman, Susan Thaul, Kimberly Morin, Thomas Tighe, Bill Brew, and Ed Scott, as well as Tim Gearan of my staff.

These people have put in countless hours. I hate to think of how much time they put in to prepare this bill. It is not an easy bill. It does not just come off the shelf that you can put together. It takes a lot of time and a lot of the history to put it together and put it together right.

I look forward to working with the chairman of the House Veterans' Affairs Committee, G.V. "SONNY" MONTGOMERY, and that committee's ranking Republican member, BOB STUMPS, as well as the other members of the House committee, to ensure swift action on this important legislation.

Mr. President, I have outlined what I consider to be the most significant of the many important provisions in the committee bill. I believe this legislation addresses in a fair and reasonable manner the most pressing needs of our Nation's veterans, and I urge my colleagues to support it.

Mr. CRANSTON. Mr. President, as the chairman of the Committee on Veterans' Affairs, I am delighted to urge approval of the pending measure, S. 869, the proposed Veterans Health Care Amendments Act of 1991, as reported by the committee on July 25, 1991, as it would be amended by an amendment that Senator SPECTER and I are proposing on behalf of the committee.

Mr. President, the measure as it comes before us today—which I will refer to as the committee bill—is derived from S. 127, which Senator MITCHELL introduced on my behalf on January 14, 1991, and which contained provisions substantively identical to health-care provisions in S. 2100 as reported by our committee in the 101st Congress (S. Rept. No. 101-379) and in S. 869, legislation I introduced with Senators DECONCINI, ROCKEFELLER, and AKAKA on April 18 to address the tremendous problem of post-traumatic stress disorder [PTSD] among wartime veterans. The committee bill addresses a wide range of subjects related to veterans health and mental-health care, including: improvements in veterans access to VA treatment services for PTSD related to combat theater service; eligibility for pre-Vietnam-era combat theater veterans to receive services at vet centers; improvements in VA's planning an overall approach to meet the needs of veterans with PTSD; establishment of mental illness research, education, and clinical centers; enhancement of VA's authority to provide prosthetic appliances and certain other medical items in certain situations; increases in the maximum payments for certain home health services; expanded services for homeless veterans; extend VA's pilot program of mobile health care clinics; establishment of an Advisory Committee on Prosthetics and Special-Disabilities Programs; access to procreative services; increased emphasis on preventive medicine; providing assistive animals for certain disabled veterans; entitlement of former prisoners of war for outpatient medical services; enhanced child-care services for VA employees; and improvements in VA efforts to provide benefits and services to minority veterans.

Mr. President, because the various provisions in the committee bill are described in detail in the committee report (S. Rept. No. 102-118) I will at this time just set forth a summary of the provisions and discuss certain provisions that I want to highlight and the committee amendment I am proposing. I refer my colleagues and all others with an interest in this bill to the committee report.

SUMMARY OF PROVISIONS

Mr. President, the committee bill has three titles: Mental Health, General Health Care, and Minority Affairs as follows:

TITLE I-MENTAL HEALTH

PART A—POST-TRAUMATIC STRESS DISORDER

Part A of title I contains freestanding provisions and amendments to title 38 that would:

First, make a series of Congressional findings related to the incidence of PTSD among veterans and the need for VA to improve its efforts to address the unmet need among veterans for PTSD treatment.

Second, require that (a) a veteran whom a mental health professional designated by VA's Chief Medical Director (CMD) has diagnosed as suffering from PTSD related to combat-area service and whose service in a theater of combat operations is verified be provided care for the disorder as though it had been adjudicated to be service connected; and (b) whenever a veteran is referred by a Vet Center to a general VA health-care facility for a determination regarding eligibility for care and services under this new entitlement for health-care services for PTSD, the veteran be evaluated for diagnostic purposes within 7 days after the date on which the referral is made.

Third, provide to veterans who served in a theater of combat operations during World War II or the Korean conflict with entitlement for counseling to assist with overcoming any psychological problems associated with such service.

Fourth, require that, not later than December 1, 1991, the Secretary of Veterans Affairs devise and initiate implementation of a plan to (a) increase, to levels commensurate with the needs of veterans suffering from PTSD related to active duty, PTSD treatment provided in specialized inpatient and outpatient treatment programs, including PTSD/substance abuse programs, and in Vet Centers; and (b) enhance outreach to inform combat veterans and their families and State and local health and social service organizations of the availability of such treatment and appropriately encourage veterans to participate in treatment.

Fifth, require that, not later than 90 days after the date of enactment, the Secretary submit to the Congressional Committees on Veterans' Affairs a report on the PTSD plan, including (a) a description of the plan; (b) what facilities, personnel, funds, and other resources are necessary to increase the availability of treatment and enhance outreach activities in accordance with the plan in a manner that does not reduce the existing capacity of the Department to provide treatment for other conditions; (c) a description of VA's efforts to make such resources available; (d) an estimate of the availability of community-based residential treatment for PTSD and the impact of such availability on the increased availability of such treatment by VA; (e) an assessment of the need for, and potential benefit of, providing scholarships or other educational assistance to improve the training of individuals providing PTSD treatment providers; (f) recommendations to improve the availability of PTSD treatment; (g) a description of the efforts by the Secretary to implement the recommendations of the CMD's Special Committee on PTSD with respect to (1) establishing educational programming directed to each of the various levels of education, training, and experience of mental health professionals involved in the treatment of veterans suffering from PTSD, and (2) giving research relating to PTSD a high priority in the allocation of funds available to VA for research related to mental health; and (h) any other proposals and recommendations that the Secretary considers appropriate to increase the availability of PTSD treatment.

Sixth, extend for 3 years the reporting requirements of the VA CMD's Special Committee on PTSD and require the Committee's reports to be submitted concurrently to VA and the Congressional Committees on Veterans' Affairs.

Seventh, require VA to specify in its FY 1993 and FY 1994 budget documents the type and amount of resources that are proposed to be spent in the coming fiscal year on PTSD-related activities.

Eighth, require the Secretary, to the extent practicable, to ensure that there are VA PTSD treatment units in locations that are readily accessible to veterans residing in rural areas.

PART B—MENTAL ILLNESS RESEARCH AND EDUCATION

Part B of title I contains an amendment to title 38 that would:

First, require the Secretary to designate not more than five VA health-care facilities as the locations for centers of mental illness research, education, and clinical activities (MIRECCs), with at least one to be designated by January 1, 1992.

Second, authorize the appropriation of $3.125 million for fiscal year 1992 and $6.25 million for each of fiscal years 1993, 1994, and 1995 for MIRECCs.

TITLE II—GENERAL HEALTH CARE

PART A—GENERAL HEALTH

Part A of title II contains freestanding provisions and amendments to title 38 that would:

First, authorize VA to provide prosthetic appliances to certain veterans with non-service-connected disabilities if the provision of such appliances would obviate the need for hospitalization.

Second, increase (a) from $2,500 to $5,000 the maximum amount of a one-time home-improvement and structural-alteration grant as part of home health services furnished in connection with the treatment of a service-connected disability, and (b) from $600 to $1,200 the maximum for such grants in connection with the treatment of a non-service-connected disability.

Third, require each VA medical center (VAMC) or regional benefits office (VARO), in consultation with all VA facilities serving veterans in the appropriate service area with existing community-based organizations that have experience in working with homeless persons, to make an assessment with respect to the needs of homeless veterans living within the facility's catchment area and to identify the needs of homeless veterans in the areas of health care, education, training, employment, shelter, counseling, and outreach services and the extent to which these needs are being met by VA programs, other government programs, and private programs.

Fourth, require each VAMC, in conjunction with the appropriate VARO and Director of Veterans Employment and Training within the State concerned, to develop, within 90 days after enactment, an annual plan for each of FYs 1992, 1993, and 1994 for outreach and the provision of comprehensive services to homeless veterans in that VAMC/VARO catchment area and, in developing such a plan, to attempt to meet, within existing authorities and available resources, those needs identified in the assessment as unmet and to coordinate with non-VA programs that provide services to homeless persons or homeless veterans.

Fifth, require that the plan include a list of all local private and government programs that offer assistance to homeless persons or homeless veterans and identify the services offered by those programs.

Sixth, require the director of each VAMC to be responsible for the carrying out of the VAMC's plan and to take appropriate steps to seek to inform each homeless veteran, and each veteran who is at risk of becoming homeless, of the services available to the veteran within the area served by the VAMC.

Seventh, require the director of each VAMC to disseminate to other Federal and State governments agencies, local govern-

ments, and all private entities that provide services to homeless veterans information regarding services provided to homeless veterans by the medical center or other facilities of the Department.

Eighth, extend through fiscal year 1993 the VA's Homeless Chronically Mentally Ill (HCMI) program's authorization of appropriations and increase it from the FY 1991 $15.75-million level to $35 million for FY 1992, $40 million for FY 1993.

Ninth, extend through fiscal year 1993 the VA Domiciliary Care for Homeless Veterans (DCHV) program's authorization of appropriations and increase it from $15.75 million in FY 1991 to $22.5 million for FY 1992, and $25 million for FY 1993.

Tenth, extend the HCMI program's authority (which currently expires at the end of FY 1992) through FY 1994.

Eleventh, authorize annual appropriations of $1.5 million for FYs 1992, 1993, and 1994 for a pilot program at up to 15 sites at which VA would be authorized to contract with existing community based organizations that have demonstrated effectiveness in providing services to homeless persons or homeless veterans for the provision of domiciliary care (including medical services) for veterans eligible for such care.

Twelfth, provide that, in entering into contracts for domiciliary care, preference be given to community-based organizations offering the most comprehensive services, particularly those services identified in the assessment as not being adequately provided by existing programs.

Thirteenth, authorize the Secretary, if it is determined that the pilot domiciliary-care programs are demonstrating effectiveness in meeting the needs of homeless veterans, to expend on these pilot programs funds appropriated for the HCMI program or the DCHV program which are above the amount expended for those programs in the preceding fiscal year.

Fourteenth, authorize VA to accept donations for the purposes of establishing one-stop, non-residential service centers and mobile support teams to assist homeless veterans and of expanding the health services available to homeless veterans eligible for VA benefits and services.

Fifteenth, require by February 1, 1994, an evaluation of the effectiveness of VA's implementation during FYs 1992 and 1993 of the (a) assessment of the needs of homeless veterans and plan to provide other services to meet those needs, (b) pilot program for providing domiciliary care to homeless veterans, and (c) establishment of one-stop, nonresidential services and mobile support teams for the provision of services to eligible homeless veterans.

Sixteenth, extend through FY 1993 the authorization for VA's mobile health clinic pilot program and provide that all funds appropriated for the program would remain available until expended.

Seventeenth, require the Secretary to establish an advisory committee on VA's prosthetics and special-disabilities programs comprised of representatives of prosthetic user groups and recognized experts in the fields of engineering, prosthetics research, rehabiltative medicine, and clinical treatment, and to require annual advisory committee reports beginning on January 15, 1992, and continuing for the next 3 years.

Eighteenth, require VA (a) to furnish services to a service-disabled veteran or the spouse of such a veteran to achieve pregnancy in cases in which the veteran's service-connected disability impairs procreative ability; and (b) to establish an interdisciplinary task force to advise the CMD on the implementation of this authority.

Nineteenth, extend until September 30, 1996, the requirement for the Secretary to conduct a pilot program of preventive health-care services and expand the categories of veterans to whom VA is required to furnish preventive services.

Twentieth, require that veterans entitled to preventive services be offered a minimum of two preventive health-care services each year and require that each VA health-care facility annually implement a major preventive health-care and health-promotion initiative.

Twenty-first, expressly provide that the permissible scope of preventive health-care services under the pilot program include stress management, smoking cessation, physical fitness, and screening for high blood pressure, glaucoma, colorectal cancer, and cholesterol.

Twenty-second, require the Secretary to submit reports on the experience under the preventive health-care services pilot program.

Twenty-third, provide express limitations on pilot preventive health-care program expenditures and require the CMD to designate a Director of Preventive Health and Health Promotion Programs.

Twenty-fourth, authorize VA to (a) provide service dogs to quadriplegic veterans who have service-connected disabilities and signal dogs to veterans who have service-connected hearing impairments, and (b) pay a veteran's expenses for necessary travel in connection with the veteran becoming adjusted to the dog.

Twenty-fifth, require the Secretary to submit to the Congressional Committees on Veterans' Affairs by January 15, 1992, a report containing (a) an evaluation of the reasons for the accumulation of the backlog in VA's provision of prosthetic appliances that grew to $10.6 million in FY 1989 and for the failure to observe, in connection with the provisions of prosthetic appliances, the statutory priorities established for the treatment of many of the veterans involved, and (b) a description of the actions that the Secretary has taken, and is planning to take, to prevent such a recurrence of the accumulation of such a significant backlog and of failure to observe such priorities.

Twenty-sixth, repeal VA's authority to provide free tobacco products to veterans receiving hospital or domiciliary care in a VA facility.

Twenty-seventh, establish a task force to recommend policies and legislation for the elimination of inconsistencies among provisions relating to eligibility for various medical assistive devices and certain other health-care benefits.

Twenty-eighth, entitle ex-prisoners of war to VA outpatient care for many non-service-connected disabilities.

Twenty-ninth, require that VA conduct a 4-year pilot program under which VA would be required to furnish assistive monkeys to quadriplegic veterans who have service-connected disabilities rated at 50 percent or more and to facilitate the furnishing of these assistive monkeys to other quadriplegic veterans.

Thirtieth, require that, before any assistive monkeys are furnished to veterans under the pilot program, the CMD provide for an independent evaluation of the way the monkeys would be treated and ensure that the person or organization performing the evaluation consults with representatives of appropriate animal welfare organizations prior to the conduct of the evaluation.

PART B—HEALTH-CARE PERSONNEL

Part B of title II contains freestanding provisions and amendments to title 38 that would:

First, authorize VA to pay additional pay to certain health-care personnel—those employed under title 5 or the title 5/title 38 "hybrid" appointment authorities who furnish direct patient care or services incident to direct patient care—for work on Saturday on the same basis as such pay is paid to registered nurses.

Second, increase the cap on special salary rates that may be paid to health-care personnel so as to permit the rates to exceed by two times the difference between the minimum and maximum of the applicable grade and require the Secretary to notify the Congressional Committees on Veterans' Affairs when a special salary rate becomes 94 (or more) percent of the maximum amount permitted.

Third, require VA to increase rates of pay for VA psychologists who have board certification by using the "hybrid" title 5/title 38 authorities unless the CMD certifies, within 90 days after the date of enactment, that an increase of board-certified psychologists is not necessary for VA to furnish the appropriate quality of psychological services to veterans.

Fourth, require the director of each VA medical center and regional office to assess the needs of the facility's employees for child-care services and to submit an annual report to the Secretary containing the director's findings and a proposal for meeting any unmet needs.

TITLE III—MINORITY AFFAIRS

Title III contains a freestanding provision and an amendment to Public Law 100-527 that would:

First, require the Secretary to assign to an Assistant Secretary responsibility for assessing the effects of VA policies and activities regarding minority veterans, including women veterans, and for coordinating and monitoring policies facilitating the access of such minority veterans to VA benefits and services.

Second, reestablish the Advisory Committee on Native-American Veterans for an additional 2 years.

POST-TRAUMATIC STRESS DISORDER (PTSD)

The provisions of part A of title I of the Committee bill are designed to improve VA's efforts in addressing the tremendous unmet needs for treatment of veterans suffering from PTSD.

BACKGROUND

I have long had special concerns about the adequacy of VA's response to veterans with PTSD and other mental-health-care needs.

In 1983, based on concerns that had arisen from the early experience of the Vet Centers about the extent of PTSD among Vietnam veterans, I authored legislation, enacted in Public Law 98-160, to require VA to provide for the conduct of a study to establish "the prevalence and incidence in the population of Vietnam veterans of post-traumatic stress disorder and other psychological problems in readjusting to civilian life." VA contracted with the Research Triangle Institute to conduct the study.

On July 14, 1988, I chaired an oversight hearing, during which we learned that preliminary results of the mandated PTSD study showed that the incidence of PTSD among Vietnam veterans was much higher

than had previously been thought. The testimony presented at that hearing—followed four months later by the formal release of the comprehensive $10-million study, known as the National Vietnam Veterans Readjustment Study (NVVRS) raised serious questions about VA's capacity to furnish the care needed by veterans suffering from this disorder.

The NVVRS is often described as the finest epidemiological mental-health study ever conducted, and its findings have been universally accepted and, I note, never questioned by VA.

The study's findings were alarming. The NVVRS found that 479,000 male veterans of the Vietnam theater of operations, representing slightly over 15 percent of all male servicemembers who served in the theater, were suffering from full-blown cases of PTSD. Another 350,000 male theater veterans, representing 11.1 percent of those who served in the theater, were found to be suffering from clinically significant PTSD symptoms which warranted professional attention.

In addition, the study also found that 960,000 male Vietnam theater veterans (over 30 percent of all such male veterans) and over 1,900 female theater veterans (over 26 percent of all such female veterans) had suffered from the full-blown disorder at some point in their lives.

I found the NVVRS results tremendously disturbing. The best scientific inquiry found that over 800,000 men and women veterans were then suffering from symptoms of a highly disturbing, life-altering, psychological disorder that for the vast majority was clearly directly related to their service in Vietnam. However, the researchers also found that a great majority had not received the help they needed and that their utilization of VA mental-health services was very low. The study reported that, of male veterans with current PTSD, only 20 per cent had ever utilized any VA mental-health services and that in the 12 months preceding the study, only 10.3 percent had utilized any VA mental-health services. Overall, approximately 80 percent of the male veterans with current PTSD had not received mental-health services from any source during the previous 12 months.

I am not aware of any other uncontroverted study that has documented such a great unmet need among veterans for medical treatment for a very serious condition that is directly related to their active-duty service. Combat veterans' needs for treatment and services for PTSD related to their service are precisely the type of needs that the VA medical care system was established to meet. Unfortunately, despite this documented need, VA has not placed a sufficiently high priority on addressing it, and the system has simply not done very well by these veterans.

VA currently employs three basic models through which specialized PTSD treatment is furnished. First, specialized inpatient PTSD units (SIPUs) provide intensive care for PTSD in a hospital setting, generally through a three-month course of treatment. Second, PTSD Clinical Teams (PCTs)—consisting of four FTE, two of which are funded through VA central office and two provided by the host medical center—provide outpatient PTSD treatment to veterans who are referred to the hospital from Vet Centers or other sources and follow-up care to veterans discharged from an SIPU. The PCTs also serve as a resource to staffs in the general psychiatry wards and in substance abuse programs in their facilities. Third, PTSD/substance abuse units (PSUs) provide either inpatient or outpatient care to veterans with a dual diagnosis of PTSD and substance abuse, which unfortunately is common among veterans with PTSD. In addition, VA has advised the committee that two new treatment program models have been developed. The first is an evaluation and brief treatment PTSD unit which will consist of a short-term inpatient stay of perhaps two weeks, during which the veterans will be evaluated as to whether additional inpatient care is necessary and will receive intensive PTSD treatment. The second is a PTSD residential rehabilitation program which will provide domiciliary-based care for veterans who have completed an inpatient PTSD treatment program and will focus on rehabilitation and preparation for independent living as opposed to intensive treatment.

The seventh annual report of the CMD's Special Committee on PTSD reported that, as of February 1, 1991, 18 VA medical centers operated SIPUs, 44 operated PCTs, and 4 operated PSUs. VA has advised that, with the $5 million provided in the regular appropriations Act for FY 1991 for specialized PTSD treatment, 8 new PCTs, 3 new SIPUs, and up to 4 new PSUs will be established and that some of the funds will be used to augment resources for existing SIPUs.

In its most recent report, the Special Committee on PTSD reiterated the need for additional inpatient and outpatient PTSD care in the VA system. SIPUs, which are designed to treat veterans with severe cases of PTSD through an intensive three-month program, have been plagued by chronic waiting lists for the past three years. The Special Committee reported that this problem remains; that, as of January 1, 1991, over 1,300 veterans were waiting for either pre-admission screening at the SIPUs or for admission to treatment; and that the length of wait ranged from zero to five months for screening and, in addition, from one week to 13 months for admission to treatment. It is totally unacceptable for veterans who need treatment for PTSD to have to wait as long as 5 months just to be screened for admission into a program and then be told to wait for as long as 13 months before they can receive the treatment they need. The Special Committee stated that, "for those veterans in need of specialized inpatient treatment, this inaccessibility to care can have a detrimental effect upon the veteran."

In addition, the Special Committee once again recommended, as it has in each of its annual reports since 1985, that each of VA's 158 medical centers with a psychiatry or psychology service have a PCT. Moreover, the Special Committee noted that the specialized PTSD treatment programs that do exist "tend to be located in the eastern part of our country [which] does not coincide with the location of the veteran population" with PTSD treatment needs.

It is clear that, despite the modest growth in PTSD treatment activities, much more must be done before VA will have met its responsibilities to care for veterans with PTSD.

The NVVRS's findings of the hundreds of thousands of veterans with PTSD, the inadequate number of PTSD treatment programs, and the chronic waiting lists indicate as clearly as possible that the Department has not fully met its responsibilities to our veterans. Veterans with PTSD suffer from a disorder that is not as easily seen as is a physical injury, yet the pain they feel is no less real and their need for treatment is no less important.

PTSD PROVISIONS

The provisions of part A of title I would have a tremendous positive impact on VA's current inability to provide adequate care for veterans with PTSD.

PRIORITY CARE FOR COMBAT-SERVICE RELATED PTSD

Section 103 of the bill, which addresses the problem of veterans with PTSD being unable to obtain needed care on a timely basis, is substantively similar to legislation I introduced in section 201 of S. 13 in the last Congress, which passed the Senate on October 3, 1989, and was reported by the Committee on July 19, 1990, in S. 2100. Section 103 would require VA to provide treatment for PTSD for a Vietnam-era veteran or a veteran of another period of war or of hostilities (as determined by the Secretary) on a priority-care basis once a diagnosis of the disorder has been made by a mental-health professional designated by the Chief Medical Director, and the veteran's service in a combat area is verified without the need for a pre-treatment adjudication on the issue of service-connection. This section would also require VA to accomplish an evaluation of a veteran within 7 days after the referral of the veteran to a VAMC from a Vet Center.

The practical effect of this provision would be that, if an appropriate VA diagnostician concludes that a veteran of service in a combat area is suffering from PTSD and that the PTSD is related to that service, care would be forthcoming on a priority basis without the veteran having to wait for a formal VA adjudication of service connection, as long as the Veterans Benefits Administration or another designated office or official verified that the veteran served in a combat area. This verification would have to take place as quickly as possible.

By enabling veterans suffering from combat-area-service-related PTSD to receive VA health care on a priority basis without the need for their PTSD to be formally adjudicated as service connected, this provision would avoid requiring these veterans to wait several months for the outcome of the VA claims adjudication process before being able to receive treatment. It would also have the effect of removing the encouragement for a veteran to seek monetary compensation for the disorder to receive necessary treatment for it.

I recognize that some veterans in financial distress will still need to undergo the adjudication process in order to obtain compensation. However, my purpose in recommending this provision is to make it possible to avoid, for combat-area veterans in need of PTSD care, the delay in receiving care, and the stress, that the adjudication process can entail.

I recognize that this provision would entail some reallocation of VA resources. However, I strongly believe that any such change in focus so as better to serve the needs of veterans with combat-related PTSD is fully in accordance with the historic priorities of the VA to address those needs of veterans which are associated with their military service.

The provision in section 103 which requires VA to conduct evaluations of veterans referred by Vet Centers to VA medical centers within 7 days of the date of the referral addresses the situations, which are documented in the record of the Committee's June 14, 1989, hearing, of veterans being referred to medical centers from Vet Centers and not being able to gain access to either evaluations or needed treatment and of Vet Centers failing to make the referral because they were certain, based on experience, that the

veteran would not receive an evaluation or treatment at the medical center. By requiring that such diagnostic evaluations be conducted within 7 days after the referral is made, this provision should ensure that veterans begin the treatment process without having to wait in yet another line just to receive a diagnosis of their condition.

COUNSELING FOR WORLD WAR II AND KOREAN CONFLICT VETERANS

Section 104 of the Committee bill would expand entitlement for readjustment counseling at Vet Centers so as to include World War II and Korea veterans who served in a theater of combat operations. Since the 100th Congress, I have sought legislation to provide for readjustment counseling for all combat-theater veterans. The Senate has passed such legislation twice—in section 605 of S. 2011 in the 100th Congress and section 202 of S. 13 in the 101st Congress—and Congress recently enacted legislation in the Persian Gulf supplemental authorization bill, Public Law 102-25, to expand entitlement for readjustment counseling to individuals who served on active duty after the end of the Vietnam era in areas in which hostilities occurred.

I note that the Administration supported the expansion of entitlement for readjustment counseling for post-Vietnam-era-combat-theater veterans. In fact, the Administration requested legislation that was nearly identical to the language that I proposed, and the Senate passed, three years ago. However, the recently enacted legislation does not address World War II and Korea veterans, many of whom seek help at Vet Centers. VA's Readjustment Counseling Service, which administers the Vet Center program, advises that annual surveys indicate that Vet Centers see approximately 700 to 1,000 new World War II and Korea veterans each month.

Numerous research papers have been published over the last decade which provide evidence that an expansion of Vet Center eligibility would be very beneficial for some older veterans. I refer my colleagues to the pages 29-30 of the committee report accompanying this legislation (S. Rept. No. 102-118), for a description of a number of these published research papers. Despite the doubts expressed by some that veterans of World War II and Korea have any need for Vet Center services, I believe the relevant research and the fact that some 8,500 to 12,000 veterans of those wars seek services each year at Vet Centers are clear evidence that such needs exist.

PLAN FOR ADEQUATE PTSD SERVICES

Section 105 of the bill would require that VA, not later than December 1, 1991, devise and initiate implementation of a plan to accomplish two goals—first, increasing the availability of various forms of VA treatment of PTSD to levels commensurate with the needs of veterans suffering from PTSD as the result of active-duty service, and, second, enhancing VA's outreach activities so as to inform combat veterans, the family members of such veterans, and State and local health and social service organizations of the availability fo PTSD treatment from VA and providing appropriate encouragement for the veterans to participate in treatment. The legislation would specifically require outreach efforts directed at combat veterans who are members of ethnic minority groups.

The provisions of section 105 would require VA to address the issue of meeting in a comprehensive manner the needs of veterans with PTSD. It would, however, provide the Department the discretion to develop the plan internally, taking advantage of the vast expertise that exists within the National Center on PTSD, the Chief Medical Director's Special Committee on PTSD, and the staffs of VA's Readjustment Counseling Service and Mental Health and Behavioral Science Service.

The bill would not mandate the establishment of fixed numbers of specific types of medical programs to address this enormous problem. We have had some success in advocating for specific appropriations to expand specialized programs for PTSD treatment, and I will continue to advocate such add-ons. However, I believe the proper course of action to take at this point in seeking to improve PTSD services and treatment through legislation is to make clear the high priority Congress attaches to meeting PTSD needs and require VA to carry out a mandate to make the necessary improvements.

This is similar to the approach that I followed in the late 1970's which led to the establishment of Vet Centers to carry out the legislative mandate to provide readjustment counseling, and I am confident that such an approach with regard to providing PTSD care on a priority basis would result in similar broad expansions of specialized PTSD treatment programs such as SIPUs, PCTs, PSUs, EBTPUs, and any new treatment models that may be developed, that prove effective in meeting the mandate that this legislation would create.

REPORT

To ensure that Congress is a fully informed participant in the process of change that VA would be required to undertake to meet the needs of veterans with PTSD, section 106 of the bill would require VA, not later than 90 days after the date of enactment of this legislation, to submit to the Committees on Veterans' Affairs of the Senate and House a report describing the plan VA would be required to develop. The report would be required to include a description of what facilities, personnel, funds, and other resources are necessary to increase the availability of treatment and enhance outreach in accordance with the plan, and a description of what efforts have been undertaken by the Secretary to make those resources available for the treatment of PTSD.

Taking into account the available data regarding veterans' PTSD-care needs, I believe that, by providing VA with a three-month period after the enactment of this legislation to develop a plan and prepare a report on it, the bill would grant ample time to VA to determine the number and type of new specialized PTSD treatment programs and appropriate expansions of existing programs that would be required to meet the treatment needs of veterans with PTSD. Taken as a whole, this legislation would make unmistakably clear Congress' assessment that much, much more needs to be done, and that Congress places a top priority on caring for veterans with service-related psychological problems.

The provisions of part A of title I of the Committee bill are intended to place the proper priority on treating veterans with PTSD related to their service and to create meaningful expansions and improvements in VA's system of providing mental-health care to veterans who need it as a result of their service. I have been increasingly disappointed that for years the Department has been unwilling to make meaningful changes and address a painfully obvious problem among those whom it is required to serve. In my role of Chairman of the Veterans' Affairs Committee it has long been my view that this is the area in which VA has most clearly failed to meet its primary mission to serve those who are wounded—whether psychologically or physically, or both—in the service of our nation. I applauded the Administration's actions when it sent Vet Center staff to California in the hours after the Loma Prieta earthquake to provide needed counseling to the victims, and I was equally supportive of the Administration's offer to make the staff of the National Center on PTSD available—on call, in fact—to American civilians who had been taken hostage in the Gulf subsequent to the Iraqi invasion of Kuwait. Such actions demonstrate the value of VA's excellent staff and leading research in stress-related psychiatric care.

However, it is clear that the veterans who are in need of care as a result of their service must take the highest priority when the VA weighs and ranks its many competing priorities. The hundreds of thousands of Vietnam combat veterans whose PTSD is documented, and the untold thousands of combat veterans from World War II and Korea that evidence suggests are still suffering from PTSD have waited far too long for the help they need. Moreover, the Persian Gulf War has presented VA with a new generation of wartime veterans and, despite the rapid conclusion of the war and the minimal U.S. casualties, mental-health experts have cautioned that significant numbers of those who served were exposed to stresses that may lead to psychological problems requiring treatment. It is thus imperative to move ahead to address the problem we already know of and prepare to respond to those that may arise with this new group of wartime veterans.

MENTAL ILLNESS RESEARCH AND EDUCATION

Part B of title I of the Committee bill contains provisions that would require the Secretary to designate not more than five VA health-care facilities as the locations for centers of excellence in the area of mental illness. These centers, to be known as MIRRECs, would focus on research, education, and clinical activities related to mental illness. At least one of the MIRRECs would have to be designated by January 1, 1992.

BACKGROUND

The October 20, 1985, Report of the Special Purpose Committee to Evaluate the Mental Health and Behavioral Sciences Research Program of the VA, which was chaired by Dr. Seymour Kety (and hereinafter referred to as the "Kety Committee") concluded that research on mental illness and training for psychiatrists and other mental health specialists at VA facilities were totally inadequate. The report noted that about 40 percent of all VA beds are occupied by veterans who suffer from mental disorders, whereas less than 10 percent of VA's research resources are directed toward mental illness.

In order to improve and expand the capability of VA health-care failities to respond to the needs of veterans with mental-illness disabilities, the Kety Committee recommended that VA centers of excellence be established to develop first-rate psychiatric research programs within VA. Such centers would provide state-of-the-art treatment, increase innovative basic and clinical research opportunities and enhance and encourage continuing education and training in the treatment of mental illness.

Based on the recommendations of the Kety Committee, the Committee began efforts over four years ago to encourage more re-

search into mental illnesses and to establish centers of excellence. First, legislation enacted on May 20, 1988, Public Law 100-322, included a provision—derived from section 316 of S. 9 as reported by the Committee on November 6, 1987—to add an express reference to mental illness research in the statutory description of VA's medical research mission, now set forth in section 7303(a)(2) of title 38. This reference in the law is intended to express the importance of research to mental health care and thereby to help counteract the historical trend of underfunding mental illness research.

Second, the Committee report accompanying that legislation (S. Rept. No. 100-215, page 138), urged VA to establish three centers of excellence, or MIRECCs, as proposed by the Kety Committee. VA has yet to take any action to do so.

Testimony received at this Committee's April 23, 1991, hearing was very supportive of this provision. For example, the witnesses representing the national associations of VA chiefs of both psychiatry and psychology stressed that the establishment of MIRECCs would improve VA's ability to attract top-notch psychiatrists and psychologists and thus enhance the Department's ability to provide high-quality mental health services to veterans.

Dr. Spencer Falcon, former President of the National Association of VA Chiefs of Psychiatry, and currently Regional Chief of Staff for VA's central region and Chairman of the VA's Chief Medical Director's Special Committee on Post-Traumatic Stress Disorder, testified:

"Funding for psychiatric research in the VA has remained vastly disproportionate to the utilization of psychiatric services. While psychiatric problems account for about 40% of in-patient days in VA medical centers, funding for behavioral research has never matched that percentage of the total Medical research budget. * * * The establishment of MIRECCs is a modest investment to make when one considers the potential benefits that could result from the mental health research that would be conducted, and the potential for attracting highly trained scientists and clinicians to VA employment."

I also note that the January 1991 final report of the VA Advisory Committee for Health Research Policy. A blue ribbon committee established by the Secretary of Veterans Affairs, recommended that VA establish MIRECCs as a means of increasing opportunities in psychiatric research and encouraging the formulation of new research initiatives in mental health care as well as maintaining the intellectual environment so important to quality health care. The report stated that these "centers could provide a way to deal with the emerging priorities in the VA and the Nation at large."

The proposed MIRECCs would be modeled after the successful Geriatric Research, Education, and Clinical Center (GRECCs), which were provided for in section 302 of Public Law 96-330, enacted in 1980, and of which there were 12 at VAMCs in FY 1990. The MIRECCs would be designed to (1) congregate at one facility clinicians and investigators with a clear and focused clinical research mission, such as PTSD, schizophrenia, or drug and alcohol abuse; (2) provide training and educational opportunities for students and residents in psychiatry, psychology, nursing, social work, and other professions which treat individuals with mental illness; and (3) develop new models of effective care and treatment for veterans with mental illnesses, especially those which are service connected.

I believe that the establishment of MIRECCs would also encourage research into outcomes of various types of treatment for mental illnesses, an aspect of mental-illness research which, to date, has not been fully pursued either by VA or other researchers in the field.

The Committee bill would promote research at the MIRECCs by requiring that, in the awarding of research funds for mental-illness projects, MIRECC applications be given a priority. Centers would include an emphasis on the psychosocial dimension of mental illness and on developing models for furnishing care and treatment of mental illness.

Further, the Committee bill would promote the dissemination of information regarding all aspects of MIRECC activities throughout VHA by requiring the CMD to develop continuing education programs provided at Regional Medical Education Centers.

Finally, beginning February 1, 1993, the Secretary would be required to submit to the Veterans' Affairs Committees three annual reports on the research, educational, and clinical care activities at each MIRECC and on efforts to disseminate the information throughout the VA health-care system. The administration of the program would be assigned to the VA Central Office official responsible for mental health and behavioral sciences—currently the Director of Mental Health and Behavioral Sciences.

VA has for far too long placed inadequate emphasis on researching and treating the mental-health problems of veterans and on educational activities designed to improve the capabilities of VA mental-health professionals. The establishment of MIRECCs pursuant to section 121 of the Committee bill would be a long-needed improvement in this regard, and I am hopeful that this is the year our legislation will be enacted.

TITLE II—GENERAL HEALTH CARE

I noted earlier the many important provisions contained in title II of the Committee bill and will at this time highlight provisions which relate to two matters that I consider of the utmost importance: prosthetics services and services for homeless veterans.

PROSTHETICS

Section 201 of the Committee bill would address a problem that exists with regard to VA's authority to provide prosthetic appliances.

Under current law, VA is generally prohibited from furnishing to certain veterans—those who are receiving outpatient care for non-service-connected disabilities in order to obviate the need for hospitalization—prosthetic devices and various other medical items which could prevent the need for future legislation hospitalization. This situation arose because, when legislation changing the eligibility standards for outpatient care was enacted in 1973, the eligibility standards regarding prosthetic devices was not. Thus, for example, under current law, such a veteran receiving outpatient obviate care cannot be furnished a corrective shoe for a non-service-connected foot ulcer even though the lack of the shoe may lead to later hospitalization and possible amputation of the foot. Likewise, this restriction of non-service-connected care prevents VA from providing an amputee who has a stump abrasion with a liner for, or simple repairs to, his or her artificial limb to prevent further breakdown and subsequent hospitalization. Similarly, a paralyzed, wheelchair-bound veteran prone to bed sores cannot be provided an appropriate cushion to relieve pressure areas. The restriction does not apply when a veteran is receiving inpatient care.

Section 201 of the Committee bill would, upon a determination by the Secretary that the particular items are "necessary", permit VA to provide them in preparation for, or to obviate the need for, hospitalization. This provision would not authorize VA to provide prosthetic devices and other medical supplies to all veterans, and some of the most commonly requested prosthetic items, such as eyeglasses and hearing aides, would not be furnished under this new authority because they are generally not the types of devices that are needed in order to obviate the need for, or prepare for, inpatient care. Although this provision does have an estimated cost of $7 million, I believe that any cost increases this provision would bring to VA's Prosthetics Service would be offset substantially by improvements in outpatient care resulting in reduced hospital admissions for conditions that, in the absence of provision of a prosthetic device or medical item, would otherwise deteriorate to the point at which a costly surgical procedure is required.

Section 205 of the Committee bill would require the Secretary to establish an advisory committee on VA's prosthetics and special-disabilities programs comprised of representatives of prosthetics user groups and recognized experts in the various medical and engineering fields related to prosthetics. The advisory committee would be required to submit three annual reports beginning on January 15, 1992.

During the last session of the 101st Congress, the Veterans' Affairs Committee engaged in extensive oversight of VA's prosthetics and special-disabilities programs. Those efforts were described in the Committee's report on S. 2100 (S. Rept. No. 101-379, beginning on page 463). They culminated in a 4-hour hearing on the issues on June 7, 1990. The result of our efforts, in short, was the identification of numerous serious problems in the way in which VA's prosthetics programs are funded, administered, and monitored. VA has acknowledged many of the problems and has taken steps to address many of them, including the establishment of an internal advisory committee, which Deputy Secretary Principi announced at the 1990 hearing. However, it was a full 13 months later that the administratively established advisory committee first met.

Because of the great importance that I attach to the VA's prosthetics and special-disabilities programs and the lengthy delay in VA's own advisory committee being established and finally meeting, I believe strongly that a Congressionally chartered advisory committee with a clear mission and reporting requirement is necessary to ensure that these programs maintain their high visibility and the Secretary and Congress remain fully informed in a timely manner. I regret that this provision is necessary after the extensive efforts our Committee made in identifying the problem areas and the clear need for continued high-level oversight of these programs; yet the experience to date with respect to the administratively established committee convinces me that legislation is required.

EXPANDED SERVICES FOR HOMELESS VETERANS

Section 203 of the Committee bill is designed to provide VA with a comprehensive blueprint on how to address the problem of homelessness among our veteran population. Section 203 contains provisions that would require VA medical centers or regional benefits offices, in coordination with all other VA

facilities in the appropriate service areas and local groups involved in serving homeless persons, to conduct assessments of the needs of homeless veterans living within the areas served by those centers or offices; develop plans to address the needs of these veterans which are identified as not being met by the existing network of VA and other programs; establish a 3-year, $4.5-million pilot program at up to 15 sites at which VA would be authorized to contract for domiciliary care for homeless veterans; extend VA's Homeless Chronically Mentally Ill Veterans (HCMI) program through FY 1994; and increase the authorizations of appropriations for the HCMI and Domiciliary Care for Homeless Veterans (DCHV) programs.

Although it has proven very difficult for anyone to determine with accuracy the exact size of the homeless population in the United States, several credible groups and researchers involved with the issue of homelessness have published estimates. For example, the National Coalition for the Homeless estimates that as many as 3 million individuals are currently homeless and that the numbers continue to grow. The National Alliance to End Homelessness estimates that as many as 736,000 persons may be homeless on a given night and that between 1.3 million and 2 million persons may experience homelessness at some point during the year. Countless others may be teetering near the brink of homelessness—one missed paycheck or personal crisis away. These numbers reflect an extremely urgent problem.

The best recent estimates indicate that between 450,000 and 700,000 Americans are literally homeless—sleeping on the streets or in homeless shelters—on an average night and that 80 percent of them are males. Studies have shown that approximately one-third of the homeless are veterans. It thus seems reasonable to estimate that there are, at any given time, between 150,000 and 250,000 literally homeless veterans in America. If the estimates of the National Coalition on the Homeless are used as a base, the number of homeless veterans may be as high as 1,140,000. At the Committee's April 23, 1991, hearing, Dr. Spencer Falcon, testifying on behalf of the American Psychiatric Association, estimated that on any given night there are up to 200,000 homeless veterans in America. According to Dr. Falcon, approximately 80 percent of those veterans are severely and chronically mentally ill and nearly half of the chronically mentally ill have serious medical problems.

As noted in the committee report accompanying this legislation (S. Rept. No. 102-118, pages 49-50), researchers have found that, of those who are homeless, as many as 33 percent are chronically mentally ill.

Through the HCMI program, in combination with the DCHV program, VA has provided shelter and medical and psychiatric treatment for over 35,000 homeless veterans in need of such help.

The HCMI program is a community-based program that combines aggressive outreach with health-care services, intensive case management, and time-limited care in non-VA residential treatment centers. The results from the program have been encouraging. In the program's first three years, staff in 45 VA Medical Centers in 26 States and the District of Columbia were able to carry out assessments of approximately 30,000 mentally ill, homeless veterans and place 8,000 of them in residential treatment facilities. Given the difficult nature of contacting these veterans—in soup kitchens, shelters, and on the streets—and of building trust between the veteran and the outreach worker, which is necessary to make an assessment and provide for physical and mental examinations, this level of activity indicates considerable success on the part of the program's outreach workers.

Program evaluations show that the HCMI program is reaching those it was intended to reach: long-term homeless, extremely poor, chronically mentally ill veterans. The 1990 Annual Report of the Interagency Council on the Homeless indicates that over 21 percent of those assessed by HCMI staff had been homeless for two or more years and had a median monthly income of $207. The third annual report detailing the progress of the HCMI program was submitted to the Committee in February 1990. That report indicated that 33.5 percent of the homeless veterans assessed reported having been hospitalized in the past for a general psychiatric problem.

Not surprisingly, given that the need for ongoing care is the rule rather than the exception in the treatment of chronically mentally ill persons, the clinicians determined that, at the time of discharge from the program, about half of the veterans had shown improvement but were in need of additional treatment. The 1989 report on the program indicated that only one out of eight veterans had improved to the point of needing no further treatment.

The DCHV program is composed of five clinical phases: (1) community outreach and referral; (2) admission screening and assessment; (3) medical and psychiatric evaluation; (4) medical and psychiatric treatment and social-vocational rehabilitation; and, (5) post-discharge community support. VA's second progress report on the DCHV program, submitted to the Committee on February 22, 1990, indicated that the services most frequently provided were medical and psychiatric evaluation and treatment (to over 90 percent of the patients), vocational rehabilitation (58.5 percent), and basic services such as clothing (31.3 percent). Outcome data recorded at discharge indicated that veterans with medical problems showed the most frequent improvement during the course of DCHV treatment (76.1 percent) and that over half of the veterans who had a mental-health problem or a substance-abuse problem showed improvement. Testament to the large demand that exists among homeless veterans for domiciliary care is the occupancy level at the DCHV sites which the Committee has been told remains consistently above 100 percent.

Recent visits by Committee staff to domiciliary facilities at the Coatsville, Pennsylvania VAMC and the West Los Angeles, California VAMC, have reinforced the Committee's view that the DCHV program can be an effective and compassionate way of assisting homeless veterans. It is the Committee's view that VA's HCMI and DCHV programs have helped meet many of the short-term needs of homeless veterans—a place off the street to sleep; the opportunity to receive needed medical and mental health assessments; and the furnishing of appropriate care and rehabilitative services. These services are not luxuries; they constitute humane responses to basic human needs.

The reports on these programs indicate that additional resources and approaches are needed to enhance and improve the programs' capacities and effectiveness. The third progress report on the HCMI program, for example, recommended that there be established integrated, comprehensive service programs for homeless veterans coordinated among the HCMI program, the DCHV program, and other VA programs assisting homeless veterans. I believe that the expanded authorizations and services for homeless veterans provided for the Committee bill would allow VA to develop and establish such programs and increase the number of sites at which the programs operate, as well as assign additional personnel to the existing HCMI and DCHV programs.

The Committee bill would increase the level of appropriations authorized for the HCMI and DCHV programs over the next three years and extend the authority for the HCMI program through FY 1994. For the HCMI program, the current $15.75 million level of funding authorized for FY 1991 would be increased to $30 million for FY 1992, $35 million for FY 1993, and $40 million for FY 1994. The DCHV's authorized level of appropriations would be increased from the current level of $15.75 million for FY 1991 to $20 million for FY 1992, $22.5 million for FY 1993, and $25 million for FY 1994. I believe that these increases are warranted given the general successes of these programs and the need for additional services for homeless veterans indicated by the large numbers of homeless veterans, the over-filled domiciliaries, and the VA evaluations of the HCMI and DCHV programs indicating that expansion and enhancements are needed.

The Committee bill would also require VA medical centers or regional benefits offices, in consultation with existing organizations providing services to homeless persons in the area, to conduct assessments with respect to the needs of homeless veterans for health care, education and training, employment, shelter, counseling, and outreach services. The assessments would be required to indicate the extent to which the network of existing VA and non-VA programs meet the identified needs of homeless veterans. The purpose of this assessment would be to allow VA to identify the gaps in the existing network of systems providing services to homeless veterans and to develop appropriate plans to address those areas.

VA's own evaluation of its homeless veterans programs, which was submitted to the Committee on October 3, 1991, noted that VA's approach in assisting homeless veterans involves "link[ing] all VA components; i.e., Veterans Health Services and Research Administration (VHSRA) and Veterans Benefits Administration (VBA), with local organizations, veterans' service organizations, and other Federal programs which provide assistance to homeless veterans" and that the "extensive communication and networking * * * is vital to the success of these programs." Thus, the Committee bill's requirement that such linkage be pursued is fully consistent and complementary to VA's current activities and policies.

Mr. President, the assessments that would be required by the Committee bill would help to avoid rigid, centrally-operated programs and lead to local programs that address the problems faced by homeless veterans at the local level. In addition, the Committee bill would establish a pilot program to determine the effectiveness of providing, through contracts with existing community-based organizations, domiciliary care (including medical services) to homeless veterans eligible for such care from VA. Appropriations of $1.5 million per year would be authorized for each of FYs 1992, 1993, and 1994 for pilot projects at up to 15 sites per year.

This new authority would allow VA to enter into contracts with non-VA facilities to provide services to homeless veterans who

are in need of medical, psychological, or rehabilitative services. Community-based halfway houses, therapeutic residences, or shelters that provide medical, vocational, or rehabilitative services similar to those provided for VA domiciliary facilities would be the types of facilities that would qualify for contracts under this new authority.

Finally, the Committee bill would authorize the Secretary to accept donations of funds and services for the purposes of establishing one-stop, non-residential services and mobile support teams for the assistance of, and for expanding the medical services to, homeless veterans already eligible for such services from VA. As noted earlier, such one-stop, non-residential services were recommended by VA in its February 1990 evaluation of the HCMI program. The VA's homeless program evaluation submitted to the Committee on October 3, 1991, also noted that VA-run drop-in centers for homeless veterans, such as the two which are currently operating in New York City, address basic needs that many homeless veterans have:

"Some veterans who live on the street or in shelters may not be motivated or ready for treatment when they first come in contact with a VA clinician. Many are in need of a place to shower, wash their clothes, have a meal, or maybe just sit quietly in a safe place where they will not be disturbed during the day. Drop-in Centers meet these needs, and encourage veterans to participate in medical screening, individual group and counseling sessions, and education programs. Services from an on-site Veterans Benefits Counselor may also be provided."

I believe the authority provided by the committee bill would allow VA to gain access to resources above those allocated to or by the Department, and allow VA to encourage more extensive community participation in and support for its programs for homeless veterans.

MINORITY AFFAIRS

Title III of the Committee bill includes two provisions designed to improve VA's awareness of and responsiveness to the needs of veterans of ethnic minority groups and women. Section 301 would amend the Department of Veterans Affairs Act, to require the Secretary of Veterans Affairs to assign to an Assistant Secretary responsibility for assessing the effects of VA policies and activities on minority veterans, including women veterans, and for coordinating and monitoring policies facilitating the access of minority veterans to VA benefits and services. Section 301 would add an eleventh, "minority oversight" function to the list of statutory duties to be assigned among VA's six statutory Assistant Secretaries.

I believe that this provision would help to effect significant improvements in service and benefits for minority veterans and the education of VA employees about the special concerns of minority veterans. I have long been concerned about VA's efforts to reach out to minority veterans and, although outreach efforts have been made, I believe they have often been too narrowly focused and that VA has failed, though unintentionally, to address the main unique needs and problems of minority veterans in an integrated, systematic manner. I believe that institutionalizing concern for minority veterans at the Assistant Secretary level is a necessary first step to ensuring that minority veterans have access to the full range of benefits to which they are entitled by law.

Section 302 of the Committee bill would reestablish the Advisory Committee on Native-American Veterans, which was originally established by section 19032 of the Veterans' Health-Care Amendments of 1986 (Public Law 99-272). That Advisory Committee issued its final report in 1988 and its charter subsequently lapsed. In 1990, acting in response to a recommendation by the Advisory Committee, VA established the interagency Native American Veterans Coordinating Council to oversee implementation of the Advisory Committee's recommendations and to provide interagency coordination and joint planning in the furnishing of services to Native American veterans.

A re-established Native-American Veterans Advisory Committee and the Coordinating Council would function in ways that complement each other's activities. A Congressionally-chartered, consumer-oriented advisory committee would bring important differences in perspective and purpose to issues that an Executive Branch, provider-oriented council can not. Thus, I believe that the re-establishment of the Advisory Committee on Native-American Veterans would go a long way toward ensuring that issues of importance to Native American veterans are identified and addressed by VA and other Federal agencies.

COMMITTEE MODIFICATION

The modification of the bill as reported that I am proposing on behalf of the Committee would:

First, correct problems encountered in the implementation of the VA Health-Care Personnel Act of 1991, Public Law 102-40, by (a) requiring that physicians employed by VA on the day before the effective date of the Act and who received special pay in only the categories of primary, full-time status, length of service, and board certification continue to receive at least as great an amount of special pay as they received prior to the effective date, and (b) requiring that physicians and dentists whose special-pay agreement was not approved until after the effective date of the new law be paid special pay retroactive to the effective date.

Second, authorize VA to appoint and pay under VA's title 38 authority nonphysician directors of clinical support services within the Veterans Health Administration, such as social work and prosthetics.

Third, amend section 5904 of title 38 to clarify that the prohibition against the payment of attorneys' fees for representation in a proceeding before VA relating to VA benefits does not apply in the case of a veteran or other person who is confronted with an administrative debt-collection proceeding brought by the VA or in other situations in which no claim for benefits is involved—such as constitutional challenges to VA regulations and Freedom of Information Act cases.

Fourth, amend section 1163 of title 38 to extend from January 31, 1992, through December 31, 1992, the temporary program for trial work periods and voluntary vocational rehabilitation evaluations for veterans receiving compensation at the rate paid totally disabled veterans based on a determination of individual employability.

Fifth, amend sections 1524 and 1525 of title 38 to extend from January 31, 1992, through December 31, 1992, the temporary program of vocational training for certain pension recipients and the three-year protection of veteran-pensioners' VA health-care eligibility if they lose pension entitlement as a result of work income.

Sixth, incorporate the text of S. 1553 as passed by the Senate on November 15, 1991.

Seventh, perfect a provision enacted in the FY 1992 VA, HUD, and Independent Agencies Appropriations Act, Public Law 102-139, that removed the price VA pays for drugs from the "best price" calculation under section 4401 of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990.

Eighth, make technical corrections to the text of the bill as reported.

PROHIBITION AGAINST USE OF PRICES OF DRUGS PAID BY THE DEPARTMENT OF VETERANS AFFAIRS IN THE CALCULATION OF MEDICAID REBATES

Mr. President, I want to describe in more detail the Committee modification provision relating to VA drug prices. This provision would add a proposed new section 215 to S. 869 which would modify section 519(a) of the FY 1992 VA, HUD, and Independent Agencies Appropriations Act, Public Law 102-139, in order to make it possible for section 519 to achieve its purpose. Thus, section 519(a) would be amended so as to exempt from Medicaid best-price rebate calculations prices paid for drugs and biologicals pursuant to contracts with States which include, as a basis for rebates or discounts, prices paid by VA and pursuant to contracts administered by VA through June 30, 1992, or until legislation regarding VA prices is enacted.

Section 4401 of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, which I will refer to as OBRA 1990, requires manufacturers of drugs and biologicals to give quarterly rebates to State Medicaid programs for all drugs and biologicals dispensed to Medicaid beneficiaries on an outpatient basis. These rebates are in amounts equal to the greater of (a) the difference between the average manufacturers price (AMP) for that product and the best price charged to any other purchaser, or (b) 12.5 percent of the AMP for the product. Prior to the enactment of OBRA 1990, VA prices were among the best prices for many drugs and biologicals.

Since the enactment of OBRA 1990, prices paid by VA of many drugs and biologicals and pursuant to VA-administered contracts have increased dramatically. During FY 1991, VA experienced an unprecedented $117 million increase in drug costs, at least $60 million of which VA officials estimate may be attributed to the Medicaid best-price rebate. Concerned about the impact that this dramatic increase in drug costs would have on VA's medical care budget, the Senate Appropriations Committee reported a provision which, after amendment in conference, was enacted as section 519(a) of Public Law 102-139. That provision exempted VA prices from Medicaid best-price rebate calculations through June 30, 1992, or until legislation regarding VA prices is enacted. It also directed VA to negotiate new contracts for lower prices with manufacturers.

Soon after Public Law 102-139 was signed into law, VA officials informed the Committee on Veterans' Affairs that some manufacturers of drugs and biologicals had advised VA that they were not willing to renegotiate contracts with VA, because certain non-Medicaid State programs, such as the Elderly Pharmaceutical Insurance Coverage (EPIC) program administered by the State of New York, which are not exempt from Medicaid rebate calculations, use VA prices to calculate rebates and discounts. The manufacturers argued that, for drugs and biologicals used by EPIC beneficiaries, VA prices, by reason of being EPIC prices, would remain the de facto best prices for Medicaid rebate calculations. Although it is not clear that the manufacturers' concerns are justified as a matter of law, the provision in the Committee modification would perfect the provision in Public Law 102-139 so as to ensure

that VA receives the intended benefit of that provision—a temporary reduction in VA drug costs. In keeping with this intent, the provision in the Committee modification, as an amendment to section 519(a) of Public Law 102–139, would expire at the same time as section 519(a).

CONCLUSION

In closing I thank our Committee's ranking Republican member, Senator Specter, for his continued support of and help with this legislation, and the Committee's ranking Democratic member, Senator DeConcini, for managing this bill in my absence. I also am grateful to the other members of the Committee for their support of or cooperation on this measure.

I also express my gratitude for their work on this legislation to the Committee's minority staff, Carrie Gavora, Yvonne Santa Anna, Bill Tuerk, and Tom Roberts, and, for all their help to me on this measure, majority staff members, Janet Coffman, Susan Thaul, Kimberly Morin, Thomas Tighe, Bill Brew, and Ed Scott. I also extend thanks for his assistance and cooperation on this legislation to Tim Gearan on Senator DeConcini's staff.

I look forward to working with the Chairman of the House Veterans' Affairs Committee, G.V. "Sonny" Montgomery, and that Committee's ranking Republican member, Bob Stump, as well as with the other members of the House Committee, to ensure swift action on this important legislation.

I have outlined what I consider to be the most significant of the many important provisions in the Committee bill. I believe the Committee bill addresses in a fair and reasonable manner the most pressing needs of our Nation's veterans, and I urge my colleagues to support it.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I inquire as to what is the time allocation remaining on the bill?

The PRESIDING OFFICER. The Senator from Pennsylvania controls 15 minutes on the bill and substitute.

Mr. SPECTER. I thank the Chair.

Mr. President, as ranking Republican member of the Committee on Veterans' Affairs, I am pleased to join Chairman CRANSTON in support the committee amendment to S. 869. This amendment, worked out in the bipartisan spirit that is the standard for this committee, would make both substantive and technical changes to title 38, United States Code.

In general, this amendment would: First, extend some temporary programs due to expire; second, clarify committee intent and correct an oversight in Public Law 102–40 relating to Department of Veterans Affairs [VA] physician and dentist special pay; third, give VA the authority to appoint and pay nonphysician directors under title 38; and fourth, amend title 38 to clarify the prohibition against payment of attorneys' fees. The amendment would also assist VA in lowering its cost of drugs, and would add the text of S. 1553, the marriage and family counseling bill, to S. 869. I believe these are all fair and necessary changes, many of which were requested by VA.

VOCATIONAL REHABILITATION FOR PENSIONERS

Mr. President, the committee amendment would extend, until December 31, 1992, expiring authorities of programs for trial work periods and vocational rehabilitation, vocational training for new pension recipients, and temporary protection of VA health care eligibility for pension recipients who undergo vocational training. This is a valuable program, Mr. President, and it is one which the committee intends to look at closely over the next year.

SERVICE DIRECTORS' PAY

The amendment would also authorize VA to appoint and pay nonphysician directors of clinical support services within the Veterans Health Administration under title 38 rather than title V. We believe this will grant some administrative advantage to VA by eliminating multiple pay schedules.

CLARIFICATION REGARDING PAYMENT OF ATTORNEYS' FEES

The committee amendment would also add a provision, identical to section 702 of S. 2100 as reported, to amend title 38 to clarify that the prohibition of attorneys' fees for representation in a proceeding before VA relating to VA benefits does not apply in the case of a veteran or other person who is confronted with an administrative debt collection proceeding brought by VA.

PHYSICIAN PAY AMENDMENTS

There are two provisions in the amendment which relate to Public Law 102–40, the Department of Veterans Affairs Health Care Personnel Act of 1991. One provision would correct an oversight in the original draft of that law that excluded board certified physicians and dentists from the provision guaranteeing that physicians and dentists receiving special pay only in the categories of primary, full-time status, length of service or board certification continue to receive at least as great an amount of special pay under the new statute as they did prior to the effective date.

The other provision would amends Public Law 102–40 to clarify when special pay agreements under the new special pay authority are effective. In many cases, VA physicians or dentists on the rolls on July 14, 1991, the date when the new special pay authority became effective, were ready to enter special pay agreements under the new authority on that date, but could not do so because local VA facilities were waiting for implementation instructions, or had to forward the agreements to VA Central Office for approval. This amendment authorizes VA to make such agreements retroactive to the effective date of July 14, 1991. In determining which physicians or dentists were prepared to enter into special pay agreements, it is expected that each VA medical facility would obtain a sworn statement from the physician or dentist involved in cases where there may be a question of who is responsible for the delay. Otherwise, the physician or dentist's certification would suffice.

ADULT DAY HEALTH CARE

Mr. President, it merits mentioning that earlier drafts of the committee amendment had contained provisions which would have extended for 3 years VA's specific statutory authority to provide adult day health care services to eligible beneficiaries. Adult day health care, which VA has provided since 1978, is, in many cases, a cost effective substitute for inpatient care and, in all cases, a valuable treatment option available to VA in treating aging veterans. The specific authority for VA to provide these services has now expired, but the committee has been assured by Secretary Derwinski that VA will continue to provide adult day health care services under VA's general authority to provide outpatient health care services. Therefore the committee proposes no extension in VA's now expired statutory authority. Mr. President, I ask unanimous consent that a letter from Secretary Derwinski which assures the continuation of VA's adult day health care programs be inserted into the RECORD following my remarks.

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

(See exhibit 1.)

MARRIAGE AND FAMILY COUNSELING

Mr. SPECTER. In addition to these changes, the text of S. 1553, the Persian Gulf marriage and family counseling bill is part of the committee amendment. As you know, Mr. President, this bill has already passed the Senate by unanimous consent. This bill would provide marriage and family counseling to Persian Gulf veterans, activated reservists and Guard personnel, and their families. I think this bill is a remarkable and unique response to the problems faced by Persian Gulf veterans and their families and I was proud to join Chairman CRANSTON as an original cosponsor of this legislation.

VA DRUG PRICES

Finally, Mr. President, this amendment would also help alleviate yet another problem VA is facing in trying to lower prices from drug manufacturers following the Medicaid rebate provisions of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 [OBRA].

As you recall, OBRA required drug companies to pay rebates to State Medicaid programs based on the difference between the prices paid by the States for drugs under that program and the drug companies' so-called best price. The idea was that the States should get the drug companies' best price.

Fortunately or unfortunately, it turns out that the best price charged by drug companies is often the VA price. The drug companies realized that the rebates they would have to pay

would be lower if they raised the VA price. Accordingly, the prices that VA has had to pay for drugs to treat veterans have increased, in some cases dramatically.

In an attempt to alleviate this problem, language was inserted into the VA/HUD appropriations bill, Public Law 102-139 (section 519(a)), which exempts VA pricing from the best price computation. Unfortunately, there are non-Medicaid contracts which require rebates and which use the VA price as a reference price. One of those contracts is used in a New York program called EPIC, which deals with drug sales to the elderly.

As we understand it, the drug companies have told VA that, because that is not a Medicaid contract, it can use VA prices as a benchmark. But the law still requires a rebate based on best price. If the VA price is the best price, then a contract like the EPIC contract in effect brings VA prices right back in. So the drug companies cannot lower VA prices.

For example, suppose the price a State pays for a drug under Medicaid is $15. Suppose the VA price is $10 and is the lowest price. And suppose the next lower price is $11. The rebate paid under OBRA, as modified by Public Law 102-139, would be $4—$15 minus $11—since the VA price cannot be counted.

But if one takes into account the EPIC contract, then the effective price for the same drug is $10, because that contract references the VA price. Since it is not a Medicaid contract, there's no prohibition against using the VA price as the low price. And because the Medicaid rebates are based on best price no matter where that price comes from—except VA—the VA price is, in effect, back in the calculations.

While I am not at all convinced that this conclusion is in keeping with the spirit of the law, the fact is that this apparent anomaly is causing confusion and some delay in bringing down VA drug prices.

We think that, by adding language to the Medicaid rebate provisions of OBRA which would exempt prices after any rebate or discount for drugs and biologicals paid pursuant to contracts with States which include, as a basis for rebates or discounts, the prices charge VA, rebates for State Medicaid programs will no longer consider contracts like the EPIC contract referred to above, so that there will be one less reason for the drug companies not to renegotiate pharmaceutical contracts with VA. In that way, Mr. President, we can take another step to ensure that VA in fact gets the best price.

CONCLUSION

Mr. President, these are important modifications to S. 869. I urge my colleagues to support this important amendment.

Mr. President, I commend my distinguished colleague from Arizona for his outstanding work on this pending legislation and compliment the chairman of the committee, Senator CRANSTON, for his work.

The work in the past year, Mr. President, for me has been very gratifying, coming on to the ranking Republican's position and taking the spot formerly held by my distinguished colleague, Senator SIMPSON, who had the good fortune to be chairman of the committee in the days when the Republicans had the majority control, and then following the work of my distinguished colleague, Senator MURKOWSKI.

We have moved ahead with very considerable progress for veterans during this session. Twelve bills have been signed by the President in the first portion of our 102d Congress contrasted with only four bills during the 101st Congress. I believe this reflects an increasing awareness of our duty and obligation to the veterans which has been called forcibly to mind by the gulf war, and also a greater awareness of the need for focused attention on veterans' concerns.

When I travel broadly through my State, Mr. President, I make it a point to meet with veterans, especially because our obligation to veterans is different from virtually any other expenditure which we make in the Federal Government. It is a contract and an obligation, and it is a sense that I have from my earliest childhood knowing my first veteran, my father, who was a veteran of World War I. I shall not comment extensively because I think I may be referring to some of my own views later in the debate today when we have a controversial issue.

But I was in Erie on Sunday night, met with a large group of veterans there on an issue as to what is going to happen to surgical services in Erie. Two or three weeks ago I was in Lebanon on a similar issue. I also have been in Wilkes-Barre, Altoona, Pittsburgh, and Philadelphia. There is an enormous need for focusing on the requirements of our veterans. I think this is a good bill.

Mr. President, as ranking Republican member of the Committee on Veterans' Affairs, I am pleased to support final passage of S. 869, the Veterans' Health Care Amendments of 1991. This bill makes important and necessary changes to ensure high quality health care for our Nation's veterans.

The Senate and House Veterans' Affairs Committees recently held a joint hearing to receive testimony from Oliver Meadows, chairman of the Commission on the Future Structure of Veterans Health Care, the so-called Mission Commission. The commission was established by Secretary Derwinski on April 5, 1990, and was tasked with reviewing missions and programs of VA's health care facilities to determine whether changes in services, programs, or missions at individual facilities were needed. What resulted was a number of recommendations on how VA can better provide high quality, comprehensive health care to veterans granted access to the system. I understand that VA will be looking into these recommendations and offer formal opinions on them soon.

I mention the important work of this commission and the significance of its recommendations because I believe it is important that we look into the future of veterans' health care and understand the different kinds of demands that will be placed on the system. The commission's recommendations were made on the premise that VA is a separate and unique health care system, and that its target population has special needs. It is the uniqueness of veterans' needs that I believe the provisions in S. 869 characterize. Improving treatment for post-traumatic stress disorder [PTSD], and access to prosthetics and programs for the homeless chronically mentally ill, and enhancing the quality and performance of VA health care personnel are examples of areas of veterans health care that S. 869 addresses.

Sections 102 through 110 of title I of S. 869 are provisions relating to improving veterans' access to both inpatient and outpatient treatment for PTSD. Specifically, title I would allow veterans whom a mental health professional has diagnosed as suffering from PTSD related to combat area service to receive care for his or her PTSD—even if the PTSD has not been formally adjudicated as service-connected—and that a diagnosis of the veteran's condition be made within 7 days of a veteran's referral to a VA health care facility. Veterans who served in a theater of combat operations in World War II or the Korean conflict would be entitled to readjustment counseling services at vet centers. The Secretary would be required to devise and implement a plan by no later than December 1, 1991, that would increase PTSD treatment and enhance outreach to veterans and their families, and to submit a report within 90 days of enactment on the resources necessary to implement the plan and any recommendations on further improving the plan. VA's Special Committee on PTSD reporting requirements would be extended for 3 additional years. Finally, the Secretary would be required to ensure, to the extent practicable, that VA PTSD treatment is available to veterans residing in rural areas.

Section 121 of title I would require the Secretary to designate not more than five VA health care facilities as centers for mental illness research, education, and clinical activities [MIRECC's], and would authorize the appropriation of $3.125 million for fiscal year 1992 and $6.25 million for fiscal years 1993 to 1995. This provision, Mr. President, is modeled after the highly

successful Geriatric, Research, Education, and Clinical Centers—GRECC's—which have made VA a leader in geriatric research. I expect that MIRECC's will have a similar effect on mental health research and education.

There are three sections of the bill relating to the provision of prosthetics and oversight of the VA Prosthetics and Sensory Aid Services Program. Section 201 would authorize VA to provide prosthetic appliances to certain non-service-connected disabled veterans if the appliances obviate the need for hospitalization. Section 205 of the bill would require the Secretary to establish an advisory committee on VA's prosthetics and special disabilities programs made up of veterans who use prosthetic devices, prosthetic engineers, researchers, and other individuals that have the expertise in the area of prosthetics and special disabilities. Section 209 would require the Secretary to report by January 15, 1992, on the reasons for the accumulation of a backlog in VA prostheses and a description of actions the Secretary has taken or plans to take to avoid backlogs and underfunding in the future. I would note that the VA has already made great strides in reducing their prosthetics backlog and has initiated a prosthetics improvement plan that establishes guidelines for the future of VA Prosthetics Service.

The committee bill would expand and enhance services VA provides to homeless veterans. Section 203 would require the VA to identify current needs of homeless veterans, assess how their needs are being met, develop an annual plan for outreach services and coordinate this plan with other Federal, State, and local programs. The bill would authorize additional funding for VA's Homeless Chronically Mentally Ill Program and the Domiciliary Program for Homeless Veterans and would require the VA to conduct a 3-year pilot program to provide community-based domiciliary care to homeless veterans. VA would be authorized to accept donations to establish nonresidential service centers and mobile support teams and expand health services to homeless veterans. By February 1, 1993, an independent evaluation is required to look at the effectiveness of VA's implementation of its homeless program.

At the Mission Commission hearing in October, Mr. Meadows testified that he could not think of any other organization that could do more in the areas of preventive health care than the VA. He stated, "unfortunately, things like preventive care are the first things to go * * * when the money gets short." S. 869 has provisions that directly and indirectly address this issue. Section 207 would reestablish through 1996 VA's preventive health care pilot program and would revise eligibility for care under this program to include all veterans who are currently entitled to VA medical care.

Section 204 would extend for 2 years the authorization for VA mobile health care clinic pilot program.

Section 210 of S. 869 would repeal the Secretary's authority to provide free tobacco products to veterans receiving hospital or domiciliary care in a VA facility. It is my understanding that the VA has not provided free tobacco products to veterans in over 20 years; nevertheless, the authority still exists in title 38, United States Code. Enacting this section sends, I believe, the proper message.

Improving access to preventive care not only requires that those services be made available, but also forces us to look at the issue of eligibility for care. Sections 211 and 212 of the committee bill would entitle ex-prisoners of war to VA outpatient care for any disability and mandate that a task force be established to make recommendations to VA on how to eliminate some of the inconsistencies in the laws governing veterans' eligibility for certain medical devices and health care services.

The committee bill addresses some of the needs of permanently disabled veterans with provisions that would allow them greater access to their homes and a more independent lifestyle. Section 202 of S. 869 would increase from $2,500 to $5,000 the maximum amount of a home improvement and structural alteration grant and from $600 to $1,200 the maximum for such grants in connection with treatment for a nonservice-connected disability. Section 206 would require VA to furnish procreative services to service-connected disabled veterans and their spouses when the veteran's disability impairs procreative ability. Section 208 would authorize VA to provide service dogs to quadriplegic veterans and signal dogs to veterans with service-connected hearing impairments. Section 213 of S. 869 would require VA to conduct a 4-year pilot program under which VA would provide assistive monkeys to quadriplegic veterans with service-connected disabilities rated 50 percent or more. I would like to recognize our former chairman and ranking Republican member, Senator MURKOWSKI, for his diligence and hard work on this issue.

Mr. President, the VA health care system is only as good as the health care professionals providing that care. In an effort to continue to recruit and retain well qualified staff, S. 869 contains provisions to improve pay and services provided to certain VA health care personnel. Section 221 would authorize VA to pay additional pay for work on Saturday to certain health care personnel. Section 222 would increase the cap on special salary rates to permit the rates to exceed by two times the difference between the minimum and the maximum of the applicable grade. VA would also be required to increase rates of pay to certain board-certified VA psychologists based on an assessment by the Chief Medical Director that the increased rates are necessary in order for VA to furnish the appropriate quality of psychological services. Section 224 of S. 869 would require the director of each VA medical center and regional office to assess the needs of the facility's employees for child care services and to submit an annual report to the Secretary containing the director's findings.

Title III of S. 869 has two provisions addressing minority veteran issues. Section 301 would require the Secretary to assign an Assistant Secretary for Minority Affairs who would be responsible for issues regarding minority veterans, including women veterans. The bill would also amend Public Law 100-527 to reestablish the Advisory Committee on Native-American Veterans for an additional 2 years.

Mr. President, a great amount of time and effort went into this bill. I would like to thank Janet Coffman, Kim Morin, Susan Thaul, Thomas Tighe, Bill Brew, and Ed Scott of the majority staff of the committee; Lisa Moore of Senator MURKOWSKI'S staff; and Carrie Cavora, Yvonne Santa Anna, Bill Tuerk, Charlie Battaglia, and Tom Roberts of my staff.

Ensuring high quality, comprehensive health care to our Nation's veterans is one of my highest priorities, Mr. President, I have crossed the country visiting VA hospitals, and I have spent considerable time with veterans in each of our Pennsylvania hospitals. I know how veterans feel about these hospitals, and I share that feeling: A desire for nothing but the best for these who have worn the uniform. This bill makes important strides toward that goal.

I urge my colleagues to support this important measure.

THANKS TO THE STAFF

Though it is not necessary to elaborate on this, I do think it is important to be specific even if repetitious on thanks to a very hard-working staff. Ed Scott, majority director, Janet Coffman, Kim Morin, Susan Thaul, Thomas Tighe, Bill Brew, and my own director, Tom Roberts, Charlie Battaglia, Bill Tuerk, Yvonne Santa Anna, Carrie Gavora, Scott Waitlevertch, Kathryn Post, and Hannah Thompson. Those people who work on the staff doing so much work do not get sufficient recognition. But the text has been outlined, Mr. President.

I think this is a good bill. I urge my colleagues to join in its adoption.

I inquire how much time remains?

The PRESIDING OFFICER. The Senator has 10 minutes 49 seconds.

Mr. SPECTER. Having used 4 minutes 13 seconds, I yield the floor.

EXHIBIT 1

THE SECRETARY OF VETERANS AFFAIRS,
Washington, April 5, 1991.

Hon. ARLEN SPECTER,
Ranking Minority Member, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER As required by Public Law 98-160, I am transmitting a copy of the research study on the medical efficacy and cost effectiveness of Adult Day Health Care. An enclosed White Paper contains VA comments on the study and VA plans for continued operation of the program.

Thank you for your continued support of long-term programs for aging veterans.

Sincerely yours,

EDWARD J. DERWINSKI.

ADULT DAY HEALTH CARE PROGRAM

BACKGROUND

VA began providing adult day health care (ADHC) services in 1978, with the establishment of programs at VAMC North Chicago and Palo Alto. This was followed by a program at Loma Linda in 1979, and at American Lake and Butler in 1980. The Loma Linda program was a program jointly operated by VA and a community consortium.

In 1983, Public Law 98-160 specifically authorized VA to provide a program of ADHC through VA facilities (VA-ADHC), and through contract with community facilities (CADHC). It authorized VA to provide in-kind assistance to non-VA facilities providing ADHC care to veterans in exchange for a reduction in charges to VA or by payment to VA. The legislation further mandated "a study of the medical efficacy and cost effectiveness of furnishing such (ADHC) care as an alternative for nursing home care and of the comparative advantages and disadvantages of providing such care through facilities that are not under the direct jurisdiction of the Administrator, and through facilities that are under the direct jurisdiction of the Administrator."

ESTABLISHMENT OF NEW ADHC PROGRAMS

Based on a competitive process, four new VA-ADHCs were centrally funded in 1985, and three existing centers received supplemental funding. An additional VA-ADHC was established with regional funding. In 1987, funding for a CADHC program was provided to 16 VAMCs. Subsequent to these initiatives, nine additional VA-ADHCs, and eight CADHC programs have been established in the system.

In 1986, a randomized study of ADHC as an alternative to nursing home care was initiated by the Health Services Research and Development Service.

Including program growth since 1985, VA's ADHC program currently consists of 15 VA-ADHC programs, and 24 CADHC programs (with a total of 100 contracts in place). (One of the CADHC programs (at VAMC West Side) is a joint VA/community project.) In FY 1990, the average daily census of VA-ADHCs programs was 350, and of CADHCs, 115.

VA STUDY OF ADHC

The first phase of the study was a randomized controlled trial of VA-ADHC which was begun at four VA Medical Centers in July 1987. A total of 826 patients were enrolled in this first phase of the study comparing patient outcomes and costs for patients randomly assigned to VA-ADHC or to customary care, that is, care that the veteran would have received in the absence of ADHC services. (The degree to which ADHC substituted for nursing home care was assessed by a comparison of the rates of nursing home care use by patients assigned to ADHC and to customary care.) The second phase of the study, begun in September 1988 at four additional VAMCs, was a prospective cohort study of 163 patients enrolled in CADHC. Patient outcomes and costs of this group were compared with outcomes and costs of patients receiving VA-ADHC and customary care in the first phase of the study. A report on the complete findings of the study was completed in December 1990, and accompanies this paper.

PRINCIPAL STUDY FINDINGS

The findings of the research are discussed in detail in the attached report and will be of considerable interest to the health care community at large as well as VA. Of principal importance to VA are the findings that (a) overall, ADHC, both VA and contract, was more costly than customary care; however, there were subgroups for which this was not true for VA-ADHC care, as discussed later; (2) patients and families were more satisfied with adult day health care than nursing home care; (3) health status outcomes of VA-ADHC and CADHC were not significantly different than those of patients in customary care; however there were again subgroups for whom VA-ADHC appeared to improve health status.

One research site (Site A) proved to be a cost-effective alternative to customary care. This was primarily because patients assigned to VA-ADHC used less nursing home care than patients assigned to customary care at this site. It was not possible, however, to identify unique characteristics of this site which produced the nursing home cost savings.

The research study developed a cost model for ADHC which can assist managers in predicting and controlling the cost of ADHC and thus its cost effectiveness.

DISCUSSION

The study scientifically demonstrates that ADHC did not serve as a substitute for nursing home care for the total group of patients enrolled. These findings were not unexpected and VA has long believed that ADHC is more appropriately seen as but one important part of a continuum of extended care services which may, in some instances, substitute for nursing home care. Subject to the limitations of post-hoc subgroup analyses, the study is instructive in identifying certain subgroups for whom ADHC may be cost effective or cost neutral: service-connected veterans, veterans with multiple behavior problems, and patients with high levels of physical impairment. The study further identifies several subgroups for whom health status may be improved, one of which is programmatically targetable, viz, patients not in the hospital at the time of intake (service-connected veterans).

Using the study's cost model, VA can make specific programmatic changes to reduce costs of VA-ADHCs by (1) increasing patient enrollment, (2) reducing the proportion of more highly paid professional staff, (3) reducing unnecessary length of stay in ADHC, and (4) reducing the use of other medical care.

While the study does not provide an endorsement of ADHC as a substitute for nursing home care, VA believes, nonetheless, that ADHC does have a place in the extended continuum of care. It can provide respite to family care providers, short-term continuity of care to veterans who are "between" other extended care program services, and more cost-effective care for certain veterans. It can do so at reduced costs by utilizing the study cost model to make programmatic changes in VA and contract ADHC.

The study suggests no preference for VA operated or contract programs in terms of health status or cost effectiveness. However, if VA targets the subgroup user populations suggested in the report, total number of users at any given site would be reduced. This would tend to limit the number of VA sites with sufficiently large target populations to justify a VA-operated program. Contract programs, on the other hand, require no minimum enrollment and would therefore seem to be a more practical way of providing ADHC for many VAMCs.

FUTURE DIRECTION

ADHC has a defined clinical role in the continuum of VA extended care services. Program officials will take steps to make the program more cost effective by targeting certain groups of veterans suggested by the study, reviewing staff mix for potential cost reductions, increasing patient enrollment, and reducing unnecessary length of stay. VA-operated programs will be authorized only where there is a sufficient volume of targeted patients to warrant efficient operation of a program; otherwise, contract programs will be utilized. VA will operate ADHC under existing authorities.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank the Chair. I will speak a few moments with the time on the bill as allocated by Senator SPECTER.

COMMENDATION OF MEMBERS AND THEIR STAFF

Let me thank Senator DECONCINI and Senator SPECTER for a good review of a major piece of legislation. It is an important piece of legislation, and I will have several comments on certain areas of it. The purpose of that is not to be in any way disruptive, but simply to present to the Senate, and to the public, some of the things we do in the Veterans' Affairs Committee that seem very appropriate and are. But, often they are done without any prospect of how we pay for it, which is a mistake in my mind.

Also, let me just say too that I have chaired this committee and I considered that a great honor. I was forced to relinquish that when I was again honored to be part of the leadership of my party.

AL CRANSTON was chairman of this committee when I arrived as a Member of the U.S. Senate. I think for all of us who work in the Senate, and the word is "work," there is a special relationship between the ranking member and the chairman. It is a very sensitive, fragile, relationship which is best based on trust. ALAN CRANSTON and I enjoyed that type of trust together for 13 years. I came to know him and know him well. Then of course, we worked together as the respective whips of the two parties and leaderships.

I want to commend ALAN CRANSTON, who is not here in this debate today. I know of no one, absolutely no one who has been more committed to the welfare and well-being of America's veterans. I could not point as such to a sin-

gle person in this Chamber in my observation of 13 years.

When I relinquished the chairmanship and the ranking member then became FRANK MURKOWSKI, there was no one who worked more profoundly than FRANK MURKOWSKI. Now our party is very proud to have ARLEN SPECTER representing the Republican ranks as the ranking member. He is a very fine and supportive ranking member.

DENNIS DECONCINI is a senior member of the committee, works doggedly in this area, and has a remarkable and large constituency of veterans in his home State, which is a very critical constituency to any of us.

So I want to pay particular tribute as we get to this legislation as to how it really came to pass. Although we do the work and Senator DECONCINI, Senator SPECTER, Senator MURKOWSKI, and all of us along the line have done the work. But a most loyal and dogged worker for veterans has been ALAN CRANSTON.

He suffered some recent physical disabilities, and it is a difficult time for him in his personal life, but we should give credit where credit it due. Even though I may reject some of the committee views from time to time, I think it is important to pay a tribute to him for his unselfish work for America's veterans. It was he that put together a very remarkable staff, John Steinberg, who was here for many years, and is now a member of the courts of veterans appeals and serves there with distinction; and Ed Scott, a very steady and very able man that I have observed for many years; and the counsel for our side of the aisle, Tom Roberts, again a very steady and thoughtful man; and may own personal staff member, Dave Balland, who is new to the task but filled with energy and enthusiasm and does an excellent job for me in this area.

So, Mr. President, we will pass this bill today with or without amendments. One amendment I think has a fair opportunity of adoption and the other two less so. But they need to be addressed. We shall do so and then go to conference with the very capable SONNY MONTGOMERY, the chairman, the long-time chairman of the House Veterans' Affairs Committee who is one superb and fair-minded man that I have thoroughly come to enjoy. There is no one more fair or kind or compassionate.

I sometimes need SONNY MONTGOMERY around. He used to save me from going off the various cliffs. But nevertheless I would usually hitch up and go right off the cliff anyway.

So SONNY MONTGOMERY deserves all of our adulation; and BOB STUMP, the ranking member in the House, and fine staff members, like Mack Fleming, and so many others.

They will piece together a very good bill from what we send them from here, and what they develop on their own side of the the building.

So, with that, Mr. President, I yield the remainder of the time to the floor manager with regard to the bill.

The PRESIDING OFFICER. The Senator from Pennsylvania controls 5 minutes.

Mr. SPECTER. Mr. President, I reserve that time in the event it is necessary, but I believe that there will be amendments to be offered to this bill. So I reserve the remainder of that time.

Mr. DECONCINI. I have no time. I am glad the Senator from Wyoming is here and I certainly join in thanking him for his complimentary remarks; and I certainly join him in expressing the time-honored labor that Senator CRANSTON has put in on these matters long before I came to the Senate. He deserves great credit today.

I am prepared too take any amendments or further discussions the Senator from Wyoming may like.

Mr. SIMPSON. Mr. President, then as I understand the parliamentary situation, the time on the bill has been reserved, the remainder by the floor manager, and we will go forward with amendments at this time.

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 1358

(Purpose: To strike the provision relating to care for combat-theater veterans with service-related stress disorder)

Mr. SIMPSON. 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 Wyoming [Mr. SIMPSON] proposes an amendment numbered 1358.

Mr. SIMPSON. 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 16, strike out line 18 and all that follows through page 18, line 22.

On page 18, line 23, strike out "104" and insert in lieu thereof "103".

On page 19, line 10, strike out "105" and insert in lieu thereof "104".

On page 22, line 1, strike out "106" and insert in lieu thereof "105".

On page 24, line 3, strike out "107" and insert in lieu thereof "106".

On page 24, line 21, strike out "108" and insert in lieu thereof "107".

On page 26, line 21, strike out "109" and insert in lieu thereof "108".

On page 28, line 19, strike out "110" and insert in lieu thereof "109".

Mr. SIMPSON. Mr. President, this amendment would strike section 103 of the bill which provides for priority care of certain combat theater veterans for post-traumatic stress disorder [PTSD].

That is not as dramatic a pronouncement as you might believe.

Section 103 of the bill would establish a priority for medical care of combat veterans who have post-traumatic stress disorder [PTSD].

There are no other priorities for VA medical care that are assigned on the basis of a condition without any criteria regarding service connection.

I think it is very important to hear carefully what was described by the floor manager with regard to the legislation because he spoke of the fact of diagnosis. That is true. It does provide diagnosis. It also does provide verification. That is true. But what it lacks is adjudication, which is the entire basis of the health care prioritizing within the Veterans' Administration.

This is a bypass of adjudication based on frustration. I think we want to be very careful when we legislate like that. It is true, diagnosis and verification are here but that is not what we do in the VA health care system. We adjudicate and prioritize.

Enactment of that section would mean that Congress is now dictating to VA hospitals—please hear me—that medical care must be provided to such veterans on a priority basis over other veterans who are seeking care, perhaps even for a life-threatening operation for a condition.

That provision, I think, could prove to be very disruptive and very dangerous. I caution that this manner in which priorities are to now be established and recognized within the system of veterans' benefits and services is highly unorthodox. This provision would establish for the very first time—other than one other time when we talked about psychosis, which was a temporary provision—it had a time limit to it, a priority based upon a particular condition rather than upon service. If a veteran has a condition that is service-connected, then he or she is entitled to priority treatment for medical care for that condition. There is a very clear procedure for determining that service connection.

If there is a valid rationale for extending priority for medical treatment to veterans with service-connected conditions that have not ever been adjudicated as service connected, then perhaps that rationale extends across the board. But that rationale has certainly not been demonstrated to me. What are we honestly trying to do here, other than respond in a popular way to frustration?

While it does indeed make sense, I think, to prioritize health care on the basis of whether veterans have service-connected conditions, as opposed to non-service-connected conditions, or on the inability to afford health care, it certainly makes little sense to me to establish a priority on the basis of which disease or which condition the veteran suffers from unless that is done on an individual basis, because a particular veteran on a particular day exhibits some signs of a life-threatening condition.

Let me just share with you an example of why this is a very bad provision for veterans. First, let me say, as I do often, that I am a veteran. I served 2 years in Germany at the tail end of the Army of occupation. I was never in combat. There are probably 27 million of us who are veterans, perhaps 3 to 4 million who have never been in combat or in the combat theater. It is a very important distinction that the American public does not often discern. I have always said that there is a rich tapestry placed upon my head, and I have always said our first obligation is to the combat veteran, to those who were injured in training and preparation and in the combat theater. That is where the first priority should go, not sometimes to service-connected disabled. You would be surprised how you can fit in the definition of service-connected disabled, on leave, or involved in other things. I have said all that before, and I shall not say it again.

I am very proud to have served in the U.S. Infantry, in the 2d Armored Division, "Hell on Wheels," and 10th Armored Infantry, Military Armored Personnel Carrier Platoon. I considered it a rare privilege to serve in the U.S. Army. Some do not. I did.

I was able to obtain the GI bill and GI life insurance, which will come due on the 60th year. I am looking forward to the check. I have decided to cash in and not wait for the insurance, and that is going to be a nice advantage from serving in the U.S. armed services.

Some now consider it more than a privilege. They wonder sometimes, "What is in it for me?" I think that is too bad. But that feeling exists.

Let me share with you why this is a bad provision for veterans. It establishes a priority for medical care based on this condition of PTSD rather than on whether or not the condition is service-connected.

This provision was first introduced in 1988 in the House of Representatives, and the administration—and hear this—has adamantly opposed this provision, because it bypasses the regular VA adjudication process. That is exactly what is going to happen to it this time. It is going to leave here and face the same fate. But it will appear on your record.

This provision, for the first time, will give this priority on the basis of a condition, even to a veteran who may be there before another veteran with disability, possibly life threatening. Let me give you an example: If this provision were enacted, and if you had two veterans, both seeking medical treatment at the same hospital with, say, one doctor available to them at that time. This is what would transpire: One veteran with a possible life-threatening ailment, such as chest pains or heart attack, would not be able to see the doctor before the other veteran seeking treatment for PTSD, which might have extended his or her life for years or months. That is because the veteran with unadjudicated—please hear that word "unadjudicated"—PTSD would be treated as a priority patient. That is just how I read this provision and how I understand it. Others do, too. The veterans' groups understand it, but they know the next step, which will be simply to expand the budget to embrace it. They understand that.

I asked Deputy Secretary Tony Principi this question last summer, and he replied that that was a correct reading of my interpretation of that provision. He and Edward Derwinski served with great energy and with tremendous compassion and are very accessible to those of us in the Congress.

This provision would set a very bad precedent. We will hear that there has been a precedent before, but you will also realize that that precedent was temporary and only singular.

Congress cannot and should not micromanage and dictate to the VA that certain medical care must be provided, and must also be provided to such veterans on a priority basis over other veterans. And that is exactly what this provision does.

It is bad. It will pass. There will be no reason that will penetrate the final result on that provision.

And while I concur with the provision that would limit application of those under this legislation to those who served in-country, or in the theater of operations, I do indeed feel that the establishment of this entire provision is especially unwise.

The administration, through the VA, has also indicated its objections to the provision requiring this expedited treatment and evaluation of those who have this terrible distressing mental problem—post-traumatic stress disorder.

Please hear that in my remarks I am not trying to denigrate or in any way belittle that condition. It is a terrible condition. But remember that the description of the illness or the injury of PTSD will match any description of any other citizen sometimes in every walk of life, just in the conditions of life. Hypertension, distress, depression, ulcers, those things come from life, and they also come from combat, and they also come from the service experience.

I understand that. I am saying the reason the great tide is here to push this is because it is very difficult for the VA to really be able to match their verbage. Sometimes when you start talking to a 35-year-old veteran who has just been divorced or his son has just been arrested for smoking pot or the daughter married at the age of 16, these are things that cause trauma in human beings who have not ever had any relationship to the military. It is very difficult for the Veterans' Administration, with their limited budget, to sort those things out. The VA will not have that opportunity anymore, and the resources will be diminished.

Any provision which singles out veterans on the basis of a particular disability rather than on the circumstances in which the disability was incurred—that is, combat, training, active duty—should be subject to the very closest scrutiny.

As I say, I have been very active in this area for 13 years and we have taken on some very unpopular causes, trying to simply explain where we go and what we do in this remarkable body when we mention the name "veteran."

In serving on the Veterans' Affairs Committee, and chairing the committee, in the U.S. Senate, I have faced often the tough necessity of attempting to deal responsibly with the legitimate needs of this Nation's veterans while exercizing the responsibility to deal with the economic realities which face this entire Nation, including its 27 million veterans.

At the risk of being a bit repetitious to those who know well my views on this subject, let me sum it up as clearly as I know how.

The Veterans' Administration budget for fiscal year 1992 is $32.5 billion for 27 million veterans. That is $1 billion higher than last year's budget, and that is the sixth largest budget of 24 agencies in our Government. We do our share for these fine veterans. We should, and we always have.

We are a very generous country and we have never, nor will we ever, turn our backs on veterans. I can present any veteran who would wish to communicate with me a list of the things that have been done for veterans during the tenure of the chairmanship or ranking membership of Senator ALAN CRANSTON of California and with my assistance as chairman when I was chairman.

And it is extraordinary and also another myth which needs to be demythized. We have done more in the way of legislation for the Vietnam veterans than any veteran in our history for various reasons. Guilt, the anxiety of sending them to a war that they could not win, politics, pressure, we did it. And it is an extraordinary record of support for the Vietnam veteran. We have never, ever violated that responsibility.

Senator SPECTER said we have passed 12—I actually thought there were 13—major pieces of veterans legislation. And that is a remarkable record for this session. But we cannot irresponsibly continue to pass legislation which expands the services of the VA when we have no way to pay for it. When we pass it in committee someone, some persistent and perverse rascal, may say: "How are we going to pay for that?" And the answer is: "Who cares. Just get it out of here. It is good stuff."

Well, I think the veterans will finally see that good stuff we do is going to cut into the support structure of the most deserving of veterans and then we will begin to see some reaction. Or else we will see the hoped-for reaction, which is to get more money. You guys must have made a mistake. And we do that regularly and very diligently.

So I see no need to expand the services in the VA when we have no way to finance them.

The Department of Veterans Affairs does have a mission. It is a statement on the side of the building taken from Abraham Lincoln's second inaugural address. It is: "To care for him who shall have borne the battle, and for his widow and his orphan." And when we go to mandate further laws such as this one, knowing that there simply is no way to finance it, we end up hurting the veteran, because we drain the money away from people who are our first priority to serve.

The real irony of section 103 is that there is no evidence whatsoever that it will do much good for anyone. But it will please those of us who vote for it. It is not going to shorten any lines at VA PTSD units. It will not shorten even a single line. It is not going to fund itself. It simply makes a promise to veterans that we cannot be sure will be met.

There are some who will always characterize such positions as antiveteran. But they are those who do not look at what others have done for veterans, who do not listen carefully to what has been said.

I have always said that we must recognize those priorities. The first and highest duty and priority is to the veteran of combat, or of a combat theater, or one who was injured in training or the actual performance of military duties. That is our mission. We go far, far from that and take funds then from those who are in that category.

So I would conclude my remarks on the amendment. I never said that we should turn our backs on any other veteran, not with a $32.5 billion budget. I only said that in the context of our crushing Federal deficit and a debt limit of $4.145 trillion. So we need to recognize the established priorities.

This Nation faces a potentially devastating budget battle. It is the thing that causes the most difficulty here. The budget agreement asks a painful thing for us to recognize because it is the first time we have ever been shackled in our largess. And so when we have these priorities, it is our duty to recognize and adhere to them. And this Nation faces a potentially devastating battle of the budget and veterans have to be part of the solution.

Mr. President, I would say that in my duties as whip I have often been called upon to tabulate the possible results of legislation. I know the tally on this one without even getting near a roll-call. I know the results. And I made my annual plea with some reason here, not for some reason, but with some reason, hoping that it does not fall entirely on deaf ears. And I will, therefore, not move to strike this section of the bill. And no matter how ill advised, I surely feel that it is a very bad precedent that we set in force here this day.

With that, unless there is further comment from the manager of the bill on the amendment, I at the appropriate time will withdraw the amendment.

Mr. DECONCINI. Mr. President, I want to first say to the Senator from Wyoming I appreciate his withdrawing the amendment, number one; and, No. 2, his sincere approach toward these matters that he has consistently brought to the attention of the committee. And though I disagree with him on a couple of statements he made here—and one, I do want the RECORD to show that I believe the Senator from Wyoming is not correct in stating—and I believe he stated—that a veteran with a life-threatening condition would be pushed aside for a PTSD treatment. Maybe I misinterpreted what the Senator said.

I believe under title 38, section 1712 specifically states where there are "compelling medical reasons" all medical care priorities—and this would include PTSD—can be set aside to care for a veteran in a life-threatening situation.

I just did not want the RECORD to be inaccurate. Or perhaps I misunderstood the Senator from Wyoming.

Second, the Senator raised some concern about the cost. And I will just put in a statement explaining this Senator believes, and the committee believes, that this is within the budget agreement. It only makes this a priority, which means the Veterans' Administration must find the money. And I appreciate the Senator's position on it, and I think it is good to call it to our attention that we are not ravaging or doing anything here outside the budget.

Mr. President, section 103 of the committee bill would allow veterans who have been diagnosed as suffering from post-traumatic stress disorder [PTSD] related to their combat theater service to receive treatment on a priority basis. The landmark National Vietnam Veterans Readjustment Study, released in 1988, clearly demonstrated that the great majority of the nearly half million Vietnam veterans who were found to be suffering from PTSD had not received care from VA. This provision addresses the tremendous unmet need among veterans for PTSD treatment.

Mr. President, let me be clear about what this provision provides.

First, the veterans who would benefit are combat theater veterans whom VA mental-health professionals have diagnosed as suffering from PTSD related to their combat theater service and whose combat-area service has been verified.

All it would provide for is a priority for care for this service-related disability for these veterans.

Opposition to this provision makes sense only if one believes either that the VA mental-health professional cannot make that diagnosis or that these veterans should not receive care in a timely manner. Neither belief is reasonable. Mental health professionals can make these judgments, and these veterans deserve to receive care promptly.

Mr. President, these are combat theater veterans who have been diagnosed as suffering from PTSD related to their combat area service.

To insist that these veterans must apply for disability compensation and receive a formal adjudication of service connection before they can receive priority health care clearly elevates form over substance. VA should not have to complete a claims adjudication process before furnishing care to these veterans.

In the situations to which this provision would apply, the veteran has come forward seeking mental-health care. At that point, he or she is both experiencing psychological pain or distress and obviously is motivated to participate in treatment. That is precisely when treatment should be started—when the veteran clearly wants to receive help. That is why I oppose the amendment offered by my friend from Wyoming, Mr. President.

What should the Government's response be to this combat area veteran who has a serious mental disorder related to his service? Shouldn't it be to provide that care as quickly and effectively as possible? Of course it should be. And that's the result the committee bill would achieve.

The opponents of this provision say, "No, do not treat the combat veteran for PTSD when he or she first comes forward. Even though a designated VA mental health professional has determined that treatment is needed for PTSD caused by traumatic experience in a combat area, don't treat him right away."

First, they say, make him file a claim for monetary benefits—a claim that may take 6 months or more to adjudicate. Then, if the claim for monetary benefits is granted, we'll treat the veteran at that later time. Of course by that time, 6 months or so later, the veterans's condition may have deteriorated and become more intractable. The veteran may also be disillusioned with the agency that refused him care or, for any number of reasons, be no longer motivated for treatment. The opportunity to be most helpful could be lost.

Also, despite our best efforts to fashion a health-care system for veterans that prioritizes scarce resources ac-

cording to certain principles such as service connected status, income, or status as a former POW, the system has not worked for many of the 480,000 Vietnam Veterans the National Vietnam Veterans Readjustment Study identified in 1988 as suffering from full-blown PTSD. From that undisputed, landmark study and feedback from VA clinicians, we know that hundreds of thousands of veterans are out there who need care. For example, an October 19, 1991, article in the Rocky Mountain News, quoted the Chief of Psychiatry at the Denver VA Medical Center as saying that there were at least 50 veterans at the facility who required inpatient treatment. Yet the closest VA inpatient facilities are in California, Washington, and Kansas.

Mr. President, there is no other disability as to which there is undisputed evidence of such a tremendous unmet need among veterans for health-care services related to their service. I believe strongly that we must do all we can to address the problem.

This provision will help combat area veterans get the care they need for service-related conditions if needed. The amendment to strike it should be defeated.

Mr. President, I share Senator SIMPSON'S concern about the costs of any legislation considered by the Veterans' Affairs Committee. In this case, however, action on the bill we are considering today will comply with the budget agreement reached last year and with the new budget rules that were enacted as a result of that agreement.

All costs incurred by this bill come from discretionary spending. Certain provisions may require VA to shift some funds from one purpose to another. That would reflect a long overdue redirection of resources to ensure that VA treats service-related care as its top priority. That's something our committee has been urging for years. For example, VA would have to provide some service-related PTSD care out of otherwise available medical-care funds. However, I am pleased to note that Congress provided $10 million in the fiscal year 1992 VA, HUD, and Independent Agencies Appropriations Act to expand PTSD programs.

The enactment of this bill should spur the administration to request more realistic levels for service-related care in the future.

With respect to other discretionary spending authorized in this legislation, the spending is, of course, subject to appropriations. Those discretionary programs will be funded to the extent appropriations bills provide funding within the Government-wide, domestic discretionary spending caps.

Last, Mr. President, I think the Senator from Hawaii would like to speak on the subject matter for a moment, and I will yield to him, unless the Senator from Wyoming wants to comment.

Mr. SPECTER. Mr. President, I have very brief comments.

Mr. DECONCINI. May I yield to the Senator from Wyoming first, because I mentioned some statement he made, if he wants to correct me.

Mr. SIMPSON. Mr. President, I do appreciate that opportunity, because the record is clear. When I drew the example for the body, I said very clearly when two veterans were seeking medical treatment at the same hospital, with one doctor available to see them, this is what would transpire. And that is exactly what will transpire when there is not sufficient personnel to deal with the issue of prioritization.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER (Mr. GORE). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, just a word or two, because the distinguished Senator from Wyoming, after having outlined his case, has announced he does not intend to pursue the amendment and will withdraw it. I do think a word is called for.

I share the Senator's concern about micromanagement. But I believe that this amendment on priority care for those with posttraumatic stress disorders is warranted because that is a very serious matter which has been neglected, especially from the Vietnam war.

There has been a lot of controversy about what posttraumatic stress disorder is, what makes it service connected. And in establishing this priority, the Congress will be saying to the Veterans' Administration: Give a little priority attention to this item.

We are going to be talking about an amendment which is going to be pushed forward later today for a vote, and I think at that time it would be appropriate to have a discussion in some depth with my distinguished colleague from Wyoming about the philosophies toward veterans.

I will wait for that event before talking at any length, and will hope to do that fairly briefly later today.

I now yield to our distinguished colleague from Hawaii.

The PRESIDING OFFICER. The time is controlled by the Senator from Arizona.

Mr. DECONCINI. Mr. President, I yield to the distinguished Senator from Hawaii whatever time he so asks on the amendment.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I thank the chairman for yielding this time.

I want to take the time to express my interest in this subject, because of the great need for PTSD service in my State of Hawaii, particularly in the rural neighborhood islands.

In fact, Hawaii may have the highest rates of PTSD incidents and prevalence of any place in the United States. The national media—and I refer to ABC's "20-20"—reports that the big island of Hawaii is a place where veterans with PTSD have come from around the country. They have flocked there to the big island, and have done so perhaps because its climate and geography closely resembles that of Vietnam's.

I have visited these folks in Kona on the big island. When I arrived there, they came out from the hills—they live up in the hills—and expressed their desire for more service. And many of them are PTSD-required services.

Mr. President, let me be clear about this provision and what this provision provides.

First, the veterans who would benefit are combat-theater veterans whom VA mental-health professionals have diagnosed as suffering from PTSD related to their combat-theater service, and whose combat-area service has been verified. All it would provide for is a priority for care for this service-related disability for these veterans.

Any opposition to this provision makes sense only if one believes either that the VA mental-health professionals cannot make that diagnosis or that these veterans should not receive care in a timely manner. Neither belief is reasonable. Mental-health professionals can make these judgments, and these veterans deserve to receive care promptly.

Mr. President, there are combat-theater veterans who have been diagnosed as suffering from PTSD related to their combat-area service. To insist that these veterans must apply for disability compensation and receive a formal adjudication of service connection before they can receive priority health care clearly elevates form over substance. The VA should not have to complete a claims adjudication process before furnishing care to these veterans.

In the situation to which this provision would apply, the veteran has come forward seeking mental-health care, and at that point, he or she is both experiencing psychological pain or distress, and obviously is motivated to participate in treatment. That, Mr. President, is precisely when treatment should be provided; when the veteran clearly wants to receive help.

My friend from Wyoming has worked hard in this committee, and for many years has done so, and has expressed his opinion. I am happy to note that he is withdrawing his amendment.

I just offer these comments to point out my deep interests in PTSD, and the reasons we need to help the veterans who clearly want to receive this help.

I yield the floor.

Mr. DECONCINI. Mr. President, I ask unanimous consent that Senator SANFORD and Senator WELLSTONE be added as cosponsors of S. 869 and S. 775.

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

Mr. DECONCINI. Mr. President, I am prepared to yield back the remainder

of our time on this amendment, and do so, unless the Senator from Pennsylvania has any other comments.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania has 5 minutes remaining on the bill.

Mr. SPECTER. I believe I have no time allotted on the amendment. That is under the control of Senator SIMPSON. I will retain my time on the bill. I do not believe it will be necessary to use it, but as a precautionary measure, I retain that.

Mr. DECONCINI. I yield back the remainder of the time on this amendment, Mr. President.

Mr. SIMPSON. Mr. President, let me just express what a pleasure it is to serve with the Senator from Hawaii, Senator AKAKA, who has come on the committee in his first years in the Senate and is making a great contribution. I watch him work, and you get to know your colleagues.

He is a very extraordinarily dedicated, and also very helpful in the area of rural health care, which is a very critical need in my State, as well as his. I enjoy working with him on those issues.

With that, Mr. President, I withdraw the amendment, and therefore yield back the remainder of the time on the amendment.

The PRESIDING OFFICER. The Senator has that right.

The amendment is withdrawn.

The amendment (No. 1358) was withdrawn.

AMENDMENT NO. 1359

(Purpose: To strike out the provision relating to eligibility of veterans for services at Vet centers)

Mr. SIMPSON. 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 Wyoming [Mr. SIMPSON] proposes an amendment numbered 1359.

Mr. SIMPSON. 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 18, strike out line 23 and all that follows through page 19, line 9.

On page 19, line 10, strike out "105" and insert in lieu thereof "104".

On page 22, line 1, strike out "106" and insert in lieu thereof "105".

On page 24, line 3, strike out "107" and insert in lieu thereof "106".

On page 24, line 21, strike out "108" and insert in lieu thereof "107".

On page 26, line 21, strike out "109" and insert in lieu thereof "108".

On page 28, line 19, strike out "110" and insert in lieu thereof "109".

Mr. SIMPSON. Mr. President, this amendment would strike section 104 of the bill, which provides for expanding readjustment counseling eligibility to include veterans of World War II or the Korean conflict.

This provision—hear this, please. We are talking about readjustment counseling for those two wars. This provision would bring about a major and sweeping change in the readjustment counseling program. I think it would be extremely ill-advised, for the basic reason that there already exists an entitlement for readjustment counseling for Vietnam-era veterans. It is already on the books.

This provision is yet another step that we see so often on the road to perpetuating what was originally conceived and originally created as a temporary program to assist Vietnam-era veterans in adjusting to civilian life. That is what we did this for, Vietnam veterans, people who were suspicious of the VA, and we responded to that. I was chairman. I listened for a year to the hearings and the testimony. And they made a believer out of me that these vet centers were very important.

But now this provision in this section for the very first time would extend this eligibility for readjustment counseling services to people who served in World War II and Korea. What are we really doing now? This is bizarre. It truly boggles the mind to think that the loyal veterans of World War II, which ended 45 years ago, still are having trouble readjusting to civilian life after their military service. These fine veterans have already made that transition, and in a very brave manner, many years ago. And for those who did not make the transition—that is what the VA is for.

The VA fully treats those who have that distress from the Second World War and from Korea. The vet centers were established for Vietnam veterans who were said to be alienated from the VA system. It has never been alleged until this last few months—please hear this—that the World War II veterans and Korean conflict veterans were alienated from the VA's health care system.

That is where we are. That is how we get to these places. I am wholly unpersuaded as to why scarce funding for medical care for the vet centers for the Vietnam veterans should be expended in this manner when the VA's sole purpose is to take care of veterans who have had those conditions.

You can see how hazardous the work is on the Veterans' Affairs Committee because you know where this amendment is going, too. Certainly, life hands people setbacks and disappointments. And many people, veterans of World War II and Korea among them, occasionally have trouble dealing with the complexities of life. But hear this carefully. There are psychiatric services of a full range available, always available—always have been available—through the VA for such veterans of World War I, or World War II, or Korea—of any conflict we have ever had, and especially Vietnam because we set up the centers for them.

It seems to me to be stretching things to the breaking point of absurdity to attribute problems of difficulties now for a war that ended 45 years ago, and one that ended in the early fifties, about readjusting to civilian life. I think we must honestly conjecture how many decades it takes to readjust to civilian life. Armistice was declared in the Korean conflict in 1953, 38 years ago. Many of my friends served there. World War II ended 46 years ago. Many of my friends served there. I was a boy during that conflict. I was too young to join the Guard during the Korean conflict. Many of my friends did join in a local unit in Cody, WY. Some were killed, and many served with great distinction. It was a sad, anguishing event.

So I do not want you to repel in anguish or horror that suddenly I am saying something which is evil, unkind, or not compassionate. I do not mean to suggest in any way that some veterans of those earlier wars did not have serious readjustment problems or that some may not still, still today, be suffering mental anguish as a result of their wartime experiences. That is the hell of war. In World War I it was called shellshock. In Vietnam it was called PTSD. In World War II it was called combat fatigue, or battle fatigue. That same term came into the Korean war, which was just, remember, several years after the conclusion of the Second World War.

But the strain and pressures of modern life are also certain to take their toll on any person, and psychiatric services are always available through the VA medical centers for those veterans who find they have problems as a result of their military service or other pressures of civilian life.

Surely, a part of the original justification for the storefront counseling centers—which I supported fully after hearings and learning the issue from the Vietnam veterans—was that the Vietnam era veterans were more likely to feel alienated from the system.

To suggest now, as this provision does, that veterans of these earlier wars are also so alienated from the VA's medical care system that they also hesitate to seek help after 30, 40, or 50 years—not 50, but 45—that they hesitate to seek help from its medical centers strains all credulity.

What is this, really, but a response to pressures? Not always do those pressures come—from outside the system, but inside.

The administration also shares this concern for readjustment eligibility for counseling for these veterans of service prior to Vietnam.

Finally, I will close by saying that the VA—and no one must miss this—provides a superb mental health and

counseling facility to veterans through services other than the vet centers. They always have, they always will. These services are available to veterans of all of our wars: World War I, World War II, Korea, Vietnam, Desert Storm. These individuals, these fine veterans who served, these combat veterans especially, have available to them the full range of benefits from the VA health care system, including the comprehensive psychiatric and counseling services of the VA medical centers. And there you are.

As members of the Veterans' Affairs Committee, we have all worked to ensure these excellent services are available. But, again, martyrdom is not a becoming trait. I know the score on this one, too. I simply again ask for some reason here, also some reason for some fiscal accountability and responsibility as we duplicate services.

But it will work. And it will keep alive a program that may not have had the budget stimulus because it has worked well. So now we are going to fold in wars of 38 and 45 years ago, which will only, again, result in taking benefits away from those who most need them.

So I ask that perhaps those words have been heard. We must be sensible. This is cosmetic. We take marvelous care of these veterans of earlier wars. They saved our country. And we responded to them in a very meaningful and gracious way.

Knowing the realities of such issues on the Senate floor coming from skilled assessment of my tour as chairman and ranking member, I will not move to strike that section of the bill. It will be a reckless burden upon my colleagues and an additional rollcall vote with a known result of extraordinary proportions, but I hope someone, and I think the House will hear it carefully, will realize that we should not be doing our business in this way.

We should do it in a sensible, upfront way and somehow not pretend that the veterans of wars long past are somehow deprived of services within the VA when they are given, thank God, every known possible service—psychiatric service, health care, and the attention of a system of huge dimensions to which we finance some $32.5 billion.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. Under the previous order, there are 30 minutes controlled by the Senator from Wyoming, of which 19 minutes remain, and 30 minutes controlled by the manager of the bill, the Senator from Arizona.

Mr. DECONCINI. I yield to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I shall not speak long because our distinguished colleague has stated his intention to withdraw the amendment. But I begin by thanking him for his usual careful analysis. He provides a great service to our committee, to the Senate, to the Congress and to the country in many, many ways and has again today by raising an issue on priorities.

I believe that counseling is important for World War II and Korean veterans because we have found many who have come forward who need such counseling, and I believe that help for them can be integrated into the counseling centers which are now being directed solely for the Vietnam veterans.

What we are doing here, Mr. President, is establishing a congressional say from what we have heard from the veterans in this country, from what our constituents are telling us. We do not really wish to micromanage, but I do believe it is appropriate when we hear so many cases of veterans from World War II and the Korean conflict. The Korean era is one in which I served, but not in a conflict situation. I had Stateside duty as a second lieutenant and then first lieutenant in the office of special investigations in the Air Force.

We are responding to a need for that era. Ultimately the administration will be with others. I think it is very useful, always, to have a Senator SIMPSON challenge our priorities.

We are going to have a more spirited discussion this afternon on another subject. So at least speaking for myself, I shall await that event before saying anything at any length at all. I thank the Chair and thank my colleague from Arizona.

Mr. DECONCINI. Mr. President, I echo what the Senator from Pennsylvania just said and will not go into responding to the Senator from Wyoming. I appreciate the approach of the Senator from Wyoming. He has, indeed, been one of the leaders, if not the leader, with Senator CRANSTON on these vet centers and they were, indeed, set up for Vietnam veterans.

Time has changed, the need has been expanded. Referrals are made from the veterans hospital and Veterans' Administration out of these centers. Over 7,000 Korean and Second World War veterans each year come to these centers, and the need is very clear. I have the greatest respect for my friend from Wyoming and his observations and analysis of the bill.

Mr. President, it is very important to defeat this amendment to delete the provision to make vet center services available to World War II and Korea combat veterans. In April of this year, the Congress enacted legislation to expand eligibility to individuals who served in areas of hostilities after the Vietnam era. The administration supported that expansion.

However, the recently enacted legislation does not cover combat veterans from World War II and Korea.

Numerous research papers and other reports that we have noted in committee reports provide clear evidence that some older veterans would benefit from assistance from vet centers. The common theme of these papers and reports is that the psychological effects of combat can last for a very long time in a chronic state or resurface many years after a person's exposure to extraordinary stress.

In addition, we know that significant numbers of World War II and Korea veterans are already seeking this assistance. VA's readjustment counseling service reports that approximately 600 new Korean and World War II veterans are seen at vet centers each month.

In fact, many of these older veterans are being referred to vet centers by VA medical center staff.

This is the clearest kind of proof possible that the readjustment counseling program is exactly the kind of care that these veterans need.

Mr. President, medical research and the reports I have cited, and the fact that more than 7,000 veterans of World War II and the Korean conflict come to vet centers each year seeking help, clearly establish that this legislation is needed. The vet centers have done a tremendous job in providing needed counseling to thousands of Vietnam-era veterans, and I believe strongly that the expertise of vet center staff should be tapped for the benefit of older combat theater veterans who could be helped by it.

Let me yield to the distinguished Senator from Hawaii who wants to comment on this. Excuse me, I ask the Senator to bear with me.

Mr. SIMPSON. Mr. President, I appreciate the Senator from Arizona deferring to me, and I will go immediately to the Senator from Hawaii.

As I told the staff and those involved in managing this bill, I must now absent myself. I shall return for an amendment which I shall not withdraw, so I leave the manager with the ability to please relinquish my time at the conclusion of the remarks of the Senator from Hawaii. I shall return after my obligation.

Mr. DECONCINI. I thank the Senator, and I take it the Senator has withdrawn the amendment?

Mr. SIMPSON. Indeed, I think the RECORD discloses, it should, that the amendment is, therefore, withdrawn.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn.

The amendment (No. 1359) was withdrawn.

Mr. DECONCINI. I yield to the distinguished Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. I thank the chairman for yielding time to me. I thank the Senator from Wyoming, my friend and colleague, for withdrawing his amend-

ment. While he has intended to withdraw his amendment, I would like to take a moment to comment on this issue.

As my colleagues are aware, vet centers are currently prohibited from outreaching and counseling veterans who served in pre-Vietnam conflicts, in spite of the fact that many of these veterans suffer from the same readjustment difficulties experienced by veterans who served in Southeast Asia, Grenada, Panama, or the Persian Gulf. We should take our heads out of the sand, recognize this fact, and extend vet center eligibility to all veterans who require the program's services.

Over the years, vet centers have reported widespread demand for care from pre-Vietnam-era veterans. On average, according to testimony provided to the Veterans' Affairs Committee, our vet centers—in technical violation of the law—unofficially see as many as 750 to 1,000 World War II and Korean war veterans each month. We can assume that many more such veterans would be helped if vet centers were able to counsel and outreach these veterans freely and openly.

Mr. President, the fact that vet center personnel are illegally assisting troubled veterans demonstrates their deep professional commitment to help fellow human beings in need rather than their willingness to break the law. We need to legitimize services that in some cases are already being provided secretly to veterans, under the table, even as if they were criminals or modern day lepers. We need to let vet centers carry out their mission, unfettered by artificial eligibility distinctions that have little clinical meaning.

Let me use a simple example. If a veteran walks into a VA health facility complaining of hearing loss, we try to help him. Physicians examine him, perhaps they prescribe a hearing aid. But in doing so, they don't ask him what particular era or war he served in as a condition of examination. There is no difference between this veteran and one who walks into a local vet center because he is having trouble coping with his war experiences. Perhaps he can't hold a job, maybe he can't sleep, perhaps he cowers in terror every time he hears a car backfire or a helicopter flies overhead, or perhaps he experiences unexplainable flashes of violent rage. Common sense would say that a vet center counselor should be able to see him as a client, to help him work out his problems, or to direct him to other services offered through VA.

But this particular veteran happens to be a World War II veteran; according to law, he is not eligible to use vet centers. He is ineligible despite the fact that he served in a period of war, he experienced combat, and he suffers from readjustment problems. He cannot get assistance simply because he had the profound ill-luck to have fought for his country at the wrong time. Mr. President, there is no difference between this man and his brother in arms who served in Vietnam. Neither is there a difference between his readjustment difficulties and those of the veteran who came in complaining of hearing loss. In fact, there is no difference between the two at all except the difference between mental and physical health.

This is one aspect of this debate, Mr. President. It is the presumption that those who have emotional or psychological difficulties in coping with their war experiences are somehow less deserving than those who suffer physical injuries. It is the age-old stigma against mental health that is rearing its head today.

It is also about whether a veteran should only be permitted to seek help in cold examining rooms by white-coated doctors and faceless bureaucrats, or whether he should have the opportunity to seek aid in an informal setting, where he can preserve what remains of his dignity and relate to individuals who share his experiences.

Mr. President, aside from the question of assisting a neglected veterans population, an additional reason for extending eligibility to pre-Vietnam-era veterans is that by expanding the portfolio of our vet centers, we are also helping ensure their continued viability. Over the years, we have seen the importance of these community-based facilities in treating and outreaching veterans who otherwise would not have availed themselves of VA services and benefits available in more traditional VA settings.

In fact, vet centers have served as important first-contact points, as conduits, for veterans to access other VA facilities, such as outpatient clinics, medical centers, or benefits offices. Over the course of time, because of their effectiveness, we have seen the image of vet center personnel gradually transformed from that of lone rangers to that of consummate professionals who are integral members of the VA team.

Mr. President, no one interacts with veterans on their own terms and in their own environment as well as the outstanding individuals who comprise our 196 vet centers. Their informal, people-oriented, nontraditional approach to problems has vastly expanded VA's ability to communicate with the veterans community at large.

Mr. President, I know of no more important or effective program than the Readjustment Counseling Service. Let us act wisely by giving vet centers the authority to assist all veterans with legitimate readjustment problems, regardless of the era in which they served.

Thank you, Mr. President.

I yield back my time.

Mr. DECONCINI. Mr. President, I thank the Senator from Hawaii for his, as usual, detailed explanation in opposition to an amendment that has been withdrawn but also in support of the vet centers. I thank him very much.

AMENDMENT NO. 1360

Purpose: To authorize the display of the POW/MIA flag on flagstaffs at the national cemeteries of the United States.

Mr. DECONCINI. Mr. President, on behalf of the Senator from Michigan [Mr. RIEGLE] I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator for Arizona [Mr. DECONCINI], for Mr. RIEGLE, proposes an amendment numbered 1360.

Mr. DECONCINI. 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 folllows:

On page 67, below line 14, add the following:

TITLE IV—MISCELLANEOUS

SEC. 401. AUTHORIZATION TO FLY POW/MIA FLAG AT NATIONAL CEMETERIES OF THE UNITED STATES.

(a) AUTHORIZATION.—The director of each national cemetery is authorized to display a POW/MIA flag on a flagstaff at that cemetery. In determining whether to display a POW/MIA flag at the cemetery, the director is authorized and urged to consult with appropriate representatives of local civic and veteran's organizations having an interest in the activities of the cemetery.

(b) PROHIBITION.—No officer or other employee of the Federal Government may obligate appropriated funds for the purposes of purchasing a POW/MIA flag for display at a national cemetery.

(c) DEFINITIONS.—In this section:

(1) The term "national cemetery" means any cemetery in the National Cemetery System referred to in section 1000 of title 38, United States Code.

(2) The term "POW/MIA flag" means the flag designated as the National League of Families POW/MIA flag pursuant to section 2 of the Joint Resolution designating September 21, 1990, as "National POW/MIA Recognition Day", and recognizing the National League of Families POW/MIA flag (Public Law 101-355; 104 Stat. 416).

(3) The term "flagstaff" means any flagstaff at a national cemetery, including the main flagstaff of the cemetery.

Mr. DECONCINI. Mr. President, this amendment is acceptable to both sides. It has been cleared by Senator SPECTER. It simply provides local VA cemetery directors with the authority to fly the POW/MIA flag on a daily basis.

Mr. RIEGLE. Mr. President, on April 25, I introduced a bill, along with the Senator from New Hampshire [Mr. SMITH] which would authorize Directors of Department of Veterans' Affairs National Cemeteries to fly the POW/MIA flag on a daily basis. Today, I am offering this legislation as an amend-

ment to S. 869 the Veterans Health Care Amendments Act of 1991 to afford well-deserved recognition to the thousands of American service personnel who remain missing and unaccounted for.

Sixteen years ago, our Government withdrew its last official presence from Vietnam. But in America's haste to depart, the fate of more than 2,000 service personnel was left unresolved. Furthermore, the physical remains of tens of thousands of troops who served in World War I, World War II, and the Korean war still have not been recovered. Until the fate of every missing American is resolved, America must remain committed to keeping the POW/MIA issue as a top national priority.

The amendment I introduce today is designed to change an unfortunate policy of the National Cemetery System of the Department of Veterans' Affairs. Currently, the VA permits flying of the POW/MIA flag at national cemeteries only on 3 days per year—Memorial Day, Veterans' Day, and National POW/MIA Recognition Day. This directive, though, does not acknowledge the fact that the POW/MIA question is a year-round concern for the Nation. Moreover, it falls short of the sympathy and respect America should afford to the families of missing Americans who must deal with their heartache and loss each day.

For almost 2 years, the Fort Custer National Cemetery in Augusta, MI, flew the POW/MIA flag on a daily basis. Although they had received not one complaint during that period, the VA ordered Fort Custer to lower the flag and to raise it only on the prescribed holidays. Mr. President, citizens of Michigan feel strongly about the continuing national tragedy of America's missing. If they, or other Americans, would like to fly the POW/MIA flag each day as a testimony of their concern, they should be allowed to do so. For this reason, I am introducing this amendment to authorize the directors of more than 100 cemeteries in the VA national cemetery system to fly the POW/MIA flag on a daily basis.

While this amendment places discretion on whether to fly the flag in the hands of the cemetery director, it urges the director to consult with community leaders to decide if the flag will be flown in the individual community. Although the decision to fly the flag at each cemetery would be taken out of the hands of the VA and given to each cemetery director, in practice I hope the decision to honor POW/MIA's will rest with the community.

This legislation does not contain any funding for the purchase of POW/MIA flags. It is designed to encourage community involvement through the donation of a flag to cemeteries choosing to fly one. As an example of how this process may work, $500 has already been donated for the purchase of a flag pole and a POW/MIA flag for the Fort Custer National Cemetery.

I strongly believe that daily flying of the POW/MIA flag at America's national cemeteries would be a meaningful step to commemorate American service personnel whose fate is yet unresolved. While some progress has been made to speed the search for missing Americans, we must remain dedicated to identifying and returning all possible POW/MIA's and devoted to recalling their profound contribution to the freedom we enjoy in our democratic society.

This dilemma will not end today, nor will it conclude tomorrow. But, hopefully, through our persistence and perseverance, America will one day soon have a full accounting of all missing Americans. By offering this amendment, I hope to express my commitment to achieving a full accounting of those missing and unaccounted for and to offer our Nation a fitting tribute to these esteemed and courageous people.

Mr. DECONCINI. Mr. President, I know of no opposition to this. I urge adoption of the amendment.

I yield back any time on the amendment.

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

The amendment (No. 1360) was agreed to.

Mr. BOREN. Mr. President, I want to express my sincere appreciation to the committee for including in this legislation my bill, S. 327, which will guarantee outpatient care for all former prisoners of war as defined by present law. I also thank the 40 cosponsors for their support of this measure.

It was not until 1970 that the first statutes were enacted to specifically address health problems of former POW's. Since that time, impressive progress has been made in recognizing and taking the necessary action to correct these problems.

The VA has also performed yeoman's work in meeting the needs of the former POW's. The regulations and directives to administer these recent laws have for the most part ensured prompt and proper handling of the unique problems of the POW. A good example is the easing of regulations to establish service-connected disabilities because, of course, good medical records on prisoners of war were not kept by the enemy.

Section 101 of Public Law 100-322 which covers eligibility for health care services, placed former POW's in category A which guarantees inpatient care for all former POW's but provides restricted outpatient care for those former POW's. The language reads that those former POW's less than 50 percent disabled may receive outpatient care. That, Mr. President, is the reason for my bill—the word "may." My bill very simply changes the word "may" to "shall."

Mr. President, we owe a special debt to our former POW's which, in my view, certainly includes the delivery of their health care. The impact on the health of former POW's is unknown from mental cruelty, torture, and malnutrition. In my view, every POW gave his all for his country and should know that this great country will always take care of his health needs.

As a matter of fact, we must insure that any young man or woman entering the military of this country knows that our Government commits to the health care of anyone who is taken prisoner of war.

While it appears that no POW's have been denied care, continued constraints on Federal funding are inevitable. I introduced this bill to clarify our responsibility to former POW's and to prevent a former POW from being turned away.

Of the nearly 77,000 former POW's, many fewer than half use the DVA hospital and clinic services so the CBO estimates the cost of my bill to be at the most no more than $1 million a year. Let me repeat that figure: $1 million in an annual health care budget $13,000 spent for veterans health care will guarantee outpatient care to those who served in POW camps during wars our Nation has fought.

Mr. President, I thank my fellow colleagues for helping to let the world know that we take care of our own by including my bill to provide VA outpatient care of the former POW's.

Mr. LEAHY. Mr. President, the Senate is taking an important step today to improve health care for our veterans. I strongly support the Veterans Health Care Amendments Act of 1991.

The post-traumatic stress disorder provisions in this bill are long overdue. The excellent work by Dr. Matt Friedman at the VA National PTSD Center in White River Junction, VT, has demonstrated that the diagnosis and treatment of PTSD should be a high priority in the VA health care system. I also strongly commend the persistent efforts of Senator DASCHLE who has led the fight to improve the availability of PTSD treatment.

Sadly, the administration has ignored the evidence that PTSD is a significant problem. Even though VA hospitals have become more aware of PTSD and demand on the system has increased, the administration has failed to request new funds for expanded treatment or research activities.

The Senate Appropriations Committee has found it necessary to correct this injustice. As a member of the VA-HUD Subcommittee, I have strongly supported amendments adding millions to the administration's inadequate request for PTSD from fiscal year 1989 to fiscal year 1992. The passage of this authorization act will mandate increased accessibility for veterans who need PTSD care.

Mr. President, I also want to express my support for a provision in S. 869 to expand eligibility at vet centers for World War II and Korean war veterans. These veterans suffer from the same afflictions as veterans from the Vietnam conflict and deserve treatment in vet centers. No treatment in our VA system should discriminate against veterans from a particular conflict.

ATTORNEY REPRESENTATION

Mr. ROCKEFELLER. Mr. President, as a member of the Committee on Veterans' Affairs, I have been working for several years to remedy a serious problem for veterans who are confronted by an aggressive debt collection proceeding by the Department of Veterans Affairs.

This issue is one of basic fairness. During a debt collection proceeding, a veteran's credit rating, military security clearance, and his or her future income may be at risk. This is serious matter, and veterans deserve to have the option of retaining an attorney for every step of the process.

Included in the committee amendment to the Veterans' Health Care Amendments Act is an important provision to correct this problem and clarify a veteran's right to obtain legal counsel. This provision makes clear that in situations where a veteran faces a VA initiated debt collection proceeding related to VA benefits, and in other situations in which no claim for benefits is involved—such as constitutional challenges to VA regulations and Freedom of Information Act cases, and VA actions to withhold payments because of asserted overpayments or other alleged debts to the VA—an attorney may be hired by the veteran at any point in the proceeding.

BACKGROUND

Under current law, VA treats, and under the predecessor provisions since 1986 has treated, a person facing a debt collection the same as a person initiating a benefits claim proceeding with respect to the attorneys' hiring limitations in sections 3404 and 3405 of title 38. These limitations provide that in a proceeding before VA with respect to benefits, a fee may not be paid to an attorney for services rendered before the first final decision of the Board of Veterans' Appeals, the adjudicatory body in VA's claims adjudication system. Criminal sanctions are provided for attorneys who solicit or receive fees in violation of the prohibition. These provisions have been construed by VA to prohibit a person in an administrative proceeding before the agency from retaining a defense attorney until after the first final decision of the BVA.

The VA's position on the applicability of the attorney fee restrictions to debt collection and other proceedings has taken many turns in the recent past. In 1976, for example, the VA expressly exempted debt collection proceedings from the reach of these fee statutes. Then, through a general counsel opinion issued in 1986, the agency appeared to reverse itself, stating that the attorney fee restrictions did indeed apply in the context of debt collection cases.

In June 1988, a lawsuit was filed against VA charging that application of the statutes in debt cases was contrary to the language and legislative intent of those statutes. The VA's position was upheld by the U.S. District Court for the Eastern District of Virginia in the case of *Bahnmiller et al.* v. *Derwinski*, 724 F. Supp. 1208. While the case was on appeal, the VA general counsel issued yet another opinion, which appeared to limit application of the fee restrictions to debt waiver cases and non-home loan debt proceedings. Subsequently, the agency's application of the statute was upheld by the U.S. Court of Appeals for the Fourth Circuit. The court interpreted the VA's last general counsel opinion in a broad fashion, holding that much of the case was moot because of the VA's concession of a large part of the relief sought by the parties.

Mr. President, the ever changing position of the VA on this issue in recent decades has resulted in a state of confusion as to when and how a veteran may be represented by defense counsel when facing the debt collection apparatus of the VA.

A provision in the committee amendment would clarify once and for all that veterans facing debt collection activity by the Government are entitled to hire counsel as they see fit to advise and represent them at any stage of these proceedings. My goal is to make clear that a distinction must be drawn between situations in which a veteran, as the initiating party, seeks VA benefits, and situations in which VA initiates an administrative action against the veteran to collect an alleged debt to the U.S. Government.

VA and Congress have historically attempted to keep the VA claims process as nonadversarial as possible. When a veteran makes a claim for benefits, VA personnel are obligated to provide assistance in the preparation and prosecution of the veteran's claim. The historical justifications for the attorney fee limitations have been both to retain the nonadversarial nature of the claims process and to protect veterans from being preyed upon by attorneys.

However, in cases in which the VA is the plaintiff and seeks to recover an alleged debt from a veteran or other person, the very nature of the proceeding is different from those in which a person affirmatively seeks a benefit from VA. This is because in instituting a debt collection proceeding, VA and the alleged debtor are placed from the outset in adversarial roles, and the interest in maintaining the nonadversarial nature of the system is not at issue.

Evidence of the fundamentally different nature of debt collection proceedings can be found in the fact that the Department in such proceedings commits itself by regulation to take aggressive action in collecting the alleged debt (38 CFR section 1.910). The standard practice in such cases is for VA to issue strongly worded demand letters to the debtor, citing the possible adverse consequences—including reporting the debt to credit reporting agencies which may affect the veteran's ability to obtain credit, offsetting existing disability benefits upon which the veteran may be relying, and, if necessary, referring the debt to the Internal Revenue Service for collection if the debt is not settled. In such cases, with the financial security and well being of the alleged debtor and his or her family at stake, I believe it is both necessary and entirely appropriate to afford persons the unencumbered opportunity to retain legal representation in order to ensure that their interests are adequately protected.

Mr. President, I have worked closely with Congressman STAGGERS on this issue, and applaud his leadership in the House. In March, Congressman STAGGERS chaired a hearing in his subcommittee on this issue. At that hearing, Congressman STAGGERS specifically asked the VA about this issue. VA officials testified regarding this issue that the VA did not have any objections to the legislation I cosponsored with Senator CRANSTON last year to allow the payment of attorney fees for service rendered in proceedings at the administrative level regarding loan guarantee indebtedness, including the waiver of recovery of such indebtedness.

Mr. President, as I mentioned earlier, VA now appears to draw a distinction between debt cases arising out of the home loan program, and those arising in other contexts. Indeed, the VA general counsel's most recent opinion on the issue, as interpreted by the U.S. Court of Appeals for the Fourth Circuit, suggests that veterans may have counsel in certain home loan debt cases, but not in others. This appears to be a distinction without a difference. Regardless of the circumstances giving rise to the alleged debt, the result to the veteran is the same. The veteran faces aggressive debt collection activity under a complex system of rules and appellate procedures, legally barred from hiring competent legal representation. Regardless of the size of the debt, or the circumstances giving rise to it, the stiff administrative sanctions wielded against the veteran caught up in the process are not contingent upon such distinctions. A veteran's credit rating may be ruined just as effectively over an alleged $500 education debt as it would be in the case of an alleged $20,000 home loan debt.

Mr. President, last year the distinguished chairman of the Veterans' Af-

fairs Committee, Mr. CRANSTON and myself introduced similar legislation to remedy this problem. Today, although the agency's position on the extent of these restrictions has shifted somewhat, the fundamental difficulties facing veterans in need of representation in debt collection cases remain.

This legislation is necessary to fulfill the great promise that Congress, in enacting the Veterans' Judicial Review Act, made to veterans and other persons who deal with VA that they will be afforded basic fairness in their dealings with the Department. This provision would in no way alter the full force of the limitations and sanctions that exist under current law with regard to the hiring and paying of legal counsel in cases where a person affirmatively seeks a benefit from the Department. The complexity of debt proceedings and the potentially very serious impact to debt collection cases require that a veteran or other person alleged to owe a debt to the VA have full opportunity to retain competent legal representation.

By enacting this important measure, we can protect a veteran's basic right to secure legal counsel. This is important for veterans in West Virginia and across the country. It is an issue of basic fairness.

Mr. SHELBY. Mr. President, I rise today on behalf of America's veterans community and ask that my colleagues join me in supporting legislation to enhance the lives of these brave men and women. The Senate will consider two important pieces of legislation.

S. 775, the Veterans Compensation Improvement Act of 1991, will ensure a much needed cost-of-living adjustment for disabled veterans and their dependents. The Senate is obligated to pass this legislation swiftly in order to show America's veterans that the Congress will not allow veterans entitlements to be lost among partisan disputes. The closing days of the 101st Congress failed to produce a veterans COLA.

Mr. President, there are some 410,000 veterans in my home State of Alabama. I believe that I heard from a good many of them last year when we in the Senate failed to pass a COLA bill. These men and women and their families told me that the U.S. Senate did not care about America's veterans. That, of course, is untrue. However, it is clear that we in Congress often take our Nation's veterans for granted. The Senate has the opportunity today to change that.

Furthermore, Mr. President, the Senate will be considering a bill that is of enormous benefit to the many veterans that suffer from post-traumatic stress disorder. S. 869, the Veterans Post-Traumatic Stress Disorder Treatment Act of 1991, will enhance the availability of treatment of PTSD for combat veterans who suffer from this debilitating condition. From World War II to the Persian Gulf war, thousands of veterans suffer from PTSD, a condition that is misunderstood by many in our society. Congress must take the lead in initiating such programs. Without a firm commitment to programs like PTSD treatment, many that suffer from this debilitating condition will never have the opportunity to seek treatment.

Today, the Senate has the opportunity—and the responsibility—to strengthen its relationship with the veterans community. Senator CRANSTON and his colleagues on the Veterans Affairs Committee have worked hard to bring these bills before the Senate. I implore my colleagues to join me in support of this important legislation. It is essential to the men and women that have sacrificed so much for our country, that we in the Senate act this morning to pass S. 775 and S. 869.

VETERANS COMPENSATION IMPROVEMENT ACT

Mr. DECONCINI. Mr. President, again on behalf of the majority leader under authority that is granted to him, I ask the Chair to set aside S. 869 temporarily and turn to S. 775.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 775) to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

The Senate proceeded to consider the bill which had been reported from the Committee on Veterans' Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Compensation Improvement Act of 1991".

SEC. 2. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES.

(a) IN GENERAL.—(1) The Secretary of Veterans Affairs shall, as provided in paragraph (2), increase, effective December 1, 1991, the rates of and limitations on Department of Veterans Affairs disability compensation and dependency and indemnity compensation.

(2)(A) The Secretary shall increase each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, that were increased by the amendments made by the Veterans' Compensation Amendments of 1991 (Public Law 102-3; 105 Stat. 7). The increase shall be made in such rates and limitations as in effect on November 30, 1991, and shall be by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1991, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

(b) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1991, the Secretary shall publish in the Federal Register the rates and limitations referred to in subsections (a)(2)(A) and (b) as increased under this section.

SEC. 3. CLARIFICATION OF SCOREKEEPING RULE FOR COST-OF-LIVING INCREASES IN COMPENSATION RATES.

For the purpose of calculating the baseline under section 257(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 907(b)) with respect to the increase in veterans' compensation for a fiscal year, the amount by which each rate of compensation is increased is assumed to be rounded to the nearest whole dollar.

SEC. 4. REDUCTION IN PENSION FOR VETERANS' SURVIVORS WHO ARE RECEIVING MEDICAID-COVERED NURSING HOME CARE.

(a) REDUCTION IN PENSION.—Paragraph (2) of section 5503(f) of title 38, United States Code, is amended to read as follows:

"(2)(A) Not more than $90 per month may be paid under chapter 15 of this title to or for any person described in subparagraph (B) for any period that a nursing facility furnishes such person with services covered by a Medicaid plan. The restriction in the preceding sentence applies to periods after the month of the person's admission to the nursing facility.

"(B) A person referred to in subparagraph (A) is a person—

"(i) who is covered by a Medicaid plan for services furnished such person by a nursing facility; and

"(ii) who is (I) a veteran who has neither spouse nor child, or (II) a surviving spouse who has no child.".

(b) CONFORMING AMENDMENTS.—Section 5503(f) of such title is amended as follows:

(1) In paragraph (3)—

(A) by striking out "a veteran" and inserting in lieu thereof "a person referred to in paragraph (2)(A)"; and

(B) by striking out "such veteran under paragraph (2) of this subsection" and inserting in lieu thereof "such person under such paragraph".

(2) In paragraph (4)—

(A) by striking out "A veteran" and inserting in lieu thereof "A person referred to in paragraph (2)(A)";

(B) by striking out "the veteran" both places it appears and inserting in lieu thereof "the person"; and

(C) by striking out "the veteran's" and inserting in lieu thereof "the person's".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on November 1, 1991, and apply with respect to months after October, 1991, and shall expire on September 30, 1992.

SEC. 5. EXTENSION OF PRESUMPTION OF SERVICE CONNECTION FOR CERTAIN RADIATION-EXPOSED RESERVISTS.

(a) IN GENERAL.—Section 312(c) of title 38, United States Code, is amended in paragraph (4)—

(1) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C);

(2) by inserting before subparagraph (B) (as redesignated by paragraph (1)) the following new subparagraph:

"(A) The term 'active duty' includes active duty for training and inactive duty training."; and

(3) in subparagraph (B) (as redesignated by paragraph (1)), by striking out "a veteran" and inserting in lieu thereof "an individual".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as of May 1, 1988.

SEC. 6. EXPANSION OF LIST OF DISEASES PRESUMED TO BE SERVICE-CONNECTED FOR CERTAIN RADIATION-EXPOSED VETERANS AND ELIMINATION OF LATENCY-PERIOD LIMITATIONS.

(a) IN GENERAL.—Section 312(c) of title 38, United States Code, is amended—

(1) in paragraph (1), by striking out "to a degree" and all that follows through "subsection)";

(2) in paragraph (2), by adding at the end the following new clauses:

"(N) Cancer of the salivary gland.

"(O) Cancer of the urinary tract.";

(3) by striking out paragraph (3); and

(4) by redesignating paragraph (4) as paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1992.

SEC. 7. EXAMINATION OF OTHER ACTIVITIES INVOLVING EXPOSURE TO IONIZING RADIATION.

The Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542) is amended—

(1) in section 5(a)(1)—

(A) by striking out "or" at the end of subclause (A);

(B) by striking out "; and" at the end of subclause (B) and inserting in lieu thereof ", or"; and

(C) adding at the end the following new clause—

"(C) in connection with such veteran's participation in an activity listed pursuant to section 10, to ionizing radiation; and";

(2) in section 5(b)(2)(B)—

(A) by striking out "or" after the comma at the end of clause (i);

(B) by striking out the period at the end of clause (ii), and inserting in lieu thereof ", or"; and

(C) by adding at the end the following new clause:

"(iii) a connection to exposure to ionizing radiation, in the case of a veteran who participated, or a category of veterans who participated, in an activity listed pursuant to section 10."; and

(3) in section 5(b)(3)(B)—

(A) by inserting "or from participation in an activity listed pursuant to section 10" after "device"; and

(B) by striking out "during active military, naval, or air service" and inserting in lieu thereof "while serving on active duty, active duty for training, or inactive duty training"; and

(4) by adding at the end the following:

"OTHER ACTIVITIES INVOLVING EXPOSURE TO IONIZING RADIATION

"SEC. 10. (a) IDENTIFICATION OF ACTIVITIES INVOLVING EXPOSURE.—(1) Not later than 210 days after the date of the enactment of the Veterans Compensation Improvement Act of 1991, the Secretary of Veterans Affairs (hereafter in this section referred to as the 'Secretary'), in consultation with the Secretary of Defense, shall identify not less than three activities (other than radiation-risk activities described in section 312(c) of title 38, United States Code) in which individuals serving on active duty, active duty for training, or inactive duty training have participated and which likely would have exposed such individuals to levels of ionizing radiation above background levels. In identifying the activities, the Secretary, to the extent feasible, shall consider the number and level of exposure of individuals and shall—

"(A) describe the times and places at which exposure to each listed activity may have occurred;

"(B) specify the maximum level of radiation to which participants or categories of participants in each listed activity may have been exposed;

"(C) provide information sufficient to make possible the identification of the individuals who, while so serving, participated in each of the activities; and

"(D) estimate the maximum number of individuals who participated in each of the activities.

"(2) Not later than October 1 of each of the fiscal years 1993, 1994, and 1995, the Secretary shall identify not less than three additional activities determined in the manner prescribed in paragraph (1).

"(b) EVALUATION BY THE ADVISORY COMMITTEE ON ENVIRONMENTAL HAZARDS.—Immediately after the Secretary identifies an activity pursuant to subsection (a), the Secretary shall direct the Advisory Committee (established under section 6) to evaluate, and make a finding as to, whether participation by any veteran or category of veterans in the activity resulted in an opportunity for potentially harmful exposure to ionizing radiation. Evaluations and findings made pursuant to this subsection shall be made on the basis of available scientific evidence.

"(c) REPORT OF EVALUATION.—The Advisory Committee promptly shall make the evaluation required by subsection (b) with respect to each activity identified pursuant to subsection (a) and, not later than 120 days after receiving a direction under subsection (b), submit to the Secretary a report regarding the results of the evaluation. The Advisory Committee shall include in the report its findings and such recommendations as it considers appropriate to assist the Secretary in carrying out subsection (d).

"(d) DETERMINATIONS.—The Secretary shall, within 60 days after receiving a report of an evaluation under subsection (c), list each activity identified pursuant to subsection (a) unless the Secretary determines (based on the report of the Advisory Committee under subsection (c) and all other relevant scientific evidence, information, and analysis available to the Secretary at the time of the determination) that the activity did not result in an opportunity for potentially harmful exposure to ionizing radiation.

"(e)(1) REPORTS TO CONGRESSIONAL COMMITTEES.—Within five days after the first activity is identified pursuant to subsection (a), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report of the activity and provide the information specified in subsection (a)(1) (A) through (D). Thereafter, whenever an activity is so identified, the Secretary shall immediately report that fact to such committees.

"(2) Within 120 days after receiving a report of an evaluation under subsection (c), the Secretary shall submit to such committees a copy of that report and a report of the actions that the Secretary has taken and is planning to take with respect to the matters pertaining to the evaluation.

"(f) DEFINITIONS.—For the purpose of this section, the terms 'active duty', 'active duty for training', and 'inactive duty training' shall have the meanings provided in paragraphs (21), (22), and (23), respectively, of section 101 of title 38, United States Code.".

SEC. 8. SAVINGS PROVISION FOR CERTAIN REMARRIED SPOUSES.

The amendments made by section 8004 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) shall not apply with respect to any individual who on October 31, 1990, was a surviving spouse or child of a veteran within the meaning of title 38, United States Code, unless after that date that individual (1) marries, or (2) in the case of a surviving spouse, begins to live with another person while holding himself or herself out openly to the public as that person's spouse.

Mr. DECONCINI. Mr. President, the distinguished chairman of the committee, Senator CRANSTON, has asked me also as ranking Democrat to manage this legislation. I am pleased to do it in his behalf.

I urge my colleagues to support the pending bill. This measure would make improvements in legislation enacted in 1988 for veterans who were exposed to radiation during the nuclear weapons test or the occupation of Hiroshima and Nagasaki. These improvements are very much needed.

Mr. President, on behalf of the Senator from California and myself, I especially thank the distinguished Senator from Pennsylvania, ARLEN SPECTER, for his involvement in this committee and his staff so that we can proceed to this very important legislation.

We have been able to develop a measure that will help to fulfill our commitments to our Nation's veterans by ensuring that veterans' programs are brought up to date and made current.

On behalf of Senator CRANSTON again, I send to the desk a committee modification of the bill as reported and ask that the committee substitute be so modified.

The PRESIDING OFFICER. Under the agreement, the committee retains the right to modify the amendment.

The substitute is therefore so modified.

The modification is as follows:

On page 3, line 17, strike out "Compensation" and insert in lieu thereof "Benefits".

On page 3, strike out line 19 and all that follows through page 5, line 8.

On page 5, line 9, strike out "3" and insert in lieu thereof "2".

On page 5, line 18, strike out "4" and insert in lieu thereof "3".

On page 7, line 12, strike out "on September 30, 1992." and insert in lieu thereof "in accordance with section 5503(f)(6) of title 38, United States Code.".

On page 7, strike out line 13 and all that follows through page 8, line 5, and insert in lieu thereof the following:

SEC. 4. ACCESS TO INFORMATION NECESSARY FOR THE ADMINISTRATION OF CERTAIN VETERANS' BENEFITS LAWS.

Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end the following new subsection:

"(p)(1) The provisions of this title do not apply to a disclosure of information requested pursuant to paragraph (2).

"(2) Subject to paragraph (3), the Secretary of Veterans Affairs may request a financial institution to disclose to the Department of Veterans Affairs the name and address of

any customer who is receiving or has received payment of disability compensation, dependency and indemnity compensation, or pension under the provisions of title 38, United States Code, or section 10 of Public Law 85-857, (72 Stat. 1263) by direct deposit in the customer's account at that financial institution.

"(3)(A) The Secretary may make a request referred to in paragraph (2) only if the Secretary determines that the requested information—

"(i) is necessary in order for the Department of Veterans Affairs to administer the provisions of law referred to in such paragraph; and

"(ii) cannot be secured by a reasonable search of records and information of the Department.

"(B) The Secretary shall include a certification of the determination referred to in subparagraph (A) in each request presented to a financial institution.

"(4) Information disclosed pursuant to a request referred to in paragraph (2) may be used solely for the purpose of the administration of benefits programs under laws administered by the Secretary of Veterans Affairs if, except for the exemption in paragraph (1), the disclosure of that information would otherwise be prohibited by any provision of this title.

"(5) For the purpose of this subsection, the term 'direct deposit' means a process in which funds are disbursed (by electronic transfer or otherwise) from the Treasury of the United States to a financial institution and are deposited in one or more accounts in that financial institution pursuant to instructions provided by the Secretary of the Treasury.".

On page 8, line 6, strike out "6" and insert in lieu thereof "5".

On page 8, line 10, strike out "312(c)" and insert in lieu thereof "1112(c)".

On page 8, line 22, strike out "January 1, 1992" and insert in lieu thereof "May 1, 1992".

On page 9, strike out line 1 and all that follows through page 13, line 14, and insert in lieu thereof the following:

SEC. 6. IDENTIFICATION OF CERTAIN ACTIVITIES RELATING TO EXPOSURE TO IONIZING RADIATION.

The Veterans' Dioxin and Radiation Exposure Compensation Standards Act (38 U.S.C. 1154 note) is amended by adding at the end the following new section:

"IDENTIFICATION OF ACTIVITIES INVOLVING EXPOSURE BEFORE JANUARY 1, 1970"

"SEC. 10. (a) IDENTIFICATION OF ACTIVITIES INVOLVING EXPOSURE BEFORE JANUARY 1, 1970.—(1) In order to determine whether veterans (other than veterans who participated in the tests or occupation activities referred to in section 5(a)(1)(B)) suffer from disabilities as a result of the exposure of such veterans to ionizing radiation during the active military, naval, or air service of such veterans that occurred before January 1, 1970, the Advisory Committee established under section 6 shall—

"(A) review all available scientific studies and other relevant information relating to the exposure of such veterans to ionizing radiation during such service; and

"(B) on the basis of such review, submit to the Secretary of Veterans Affairs a report containing the recommendation of the Advisory Committee on the feasibility and appropriateness for the purpose of the determination under this paragraph of any additional investigation with respect to any activity of such veterans during such service.

"(2) Upon the request of the Advisory Committee, the Secretary of Veterans Affairs (after seeking such assistance from the Secretary of Defense as is necessary and appropriate) shall make available to the Advisory Committee records and other information relating to the service referred to in paragraph (1) that may assist the Advisory Committee in carrying out the review and recommendation referred to in that paragraph.

"(3) The Advisory Committee shall submit to the Secretary of Veterans Affairs the report referred to in paragraph (1)(B) not later than September 30, 1992.

"(b) INVESTIGATION PLAN AND REPORT OF SECRETARY OF VETERANS AFFAIRS.—(1) Upon receipt of the report referred to in subparagraph (B) of subsection (a)(1), the Secretary of Veterans Affairs shall—

"(A) identify which or the activities referred to in that subparagraph, if any, that the Secretary intends to investigate more fully for the purpose of making the determination referred to in that subsection; and

"(B) prepare a plan (including a deadline for the plan) to carry out that investigation and make that determination.

"(2) Not later than April 1, 1993, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

"(A) a list of the activities identified by the Secretary pursuant to paragraph (1)(A) and the basis of such identification; and

"(B) the plan referred to in paragraph (1)(B).".

On page 13, strike out line 15 and all that follows through page 13, line 25, and insert in lieu thereof the following:

SEC. 7. EXTENSION OF AUTHORITY OF SECRETARY OF VETERANS AFFAIRS TO MAINTAIN THE REGIONAL OFFICE IN THE PHILIPPINES.

Section 315(b) of title 38, United States Code, is amended by striking out "September 30, 1991" and inserting in lieu thereof "December 31, 1996".

On page 13 below line 25, insert the following:

SEC. 8. REDESIGNATION OF CERTAIN POSITIONS WITHIN THE DEPARTMENT OF VETERANS AFFAIRS.

(a) REDESIGNATION OF POSITION OF CHIEF MEDICAL DIRECTOR.—Section 305(a)(1) of title 38, United States Code, is amended by striking out "a Chief Medical Director," and inserting in lieu thereof "an Under Secretary for Health, who is the Chief Medical Director and".

(b) REDESIGNATION OF POSITION OF CHIEF BENEFITS DIRECTOR.—Section 306(a) of such title is amended by striking out "a Chief Benefits Director," and inserting in lieu thereof "an Under Secretary for Benefits, who is the Chief Benefits Director and".

(c) CONFORMING AMENDMENT.—Section 5314 of title 5, United States Code, is amended by striking out the following:

"Chief Medical Director, Department of Veterans Affairs.

"Chief Benefits Director, Department of Veterans Affairs.";

and inserting in lieu thereof the following:

"Under Secretary for Health, Department of Veterans Affairs.

"Under Secretary for Benefits, Department of Veterans Affairs.".

(d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall take effect on the date of the enactment of this Act.

Amend the matter on page 14 to read as follows:

Amend the title so as to read: "To improve the compensation of certain veterans for exposure to ionizing radiation, to improve the administration of veterans benefits programs, and for other purposes.".

Mr. DECONCINI. Mr. President, for the information of my colleagues I will note that the committee modification deletes two provisions already enacted in Public Law 102-86. The first provision expanded compensation for radiation-related diseases to include certain reservists. The second provision corrected an inequity in section 8004 of the Omnibus Reconciliation Act of 1990 for certain remarried surviving spouses and certain married children. The modification also strikes the provision granting a COLA in compensation benefits. The COLA was enacted in Public Law 102-152 and now of course is not necessary to be reenacted. The modification adds a provision based on administrative requested legislation that would amend the Right to Privacy Act of 1978. The provision would authorize VA to obtain from financial institutions mailing addresses of those whose VA benefits are deposited through direct deposits.

I am concerned about any legislation that makes exceptions to the privacy protection, Mr. President. I believe, however, that this provision is crafted very narrowly. It will protect beneficiaries from unwarranted intrusion and will help ensure timely and accurate payment of benefits to veterans.

Finally, Mr. President, section 6 of the bill as modified would establish a mechanism for VA to examine certain past military activities that involve exposure to radiation. The provisions represent a compromise resulting from negotiations with Senator MURKOWSKI and Senator SIMPSON. We received a great deal of help and input in these negotiations from Senator SPECTER and the administration, for that matter, for which we are grateful and we have this compromise before us.

These latest revisions preserve the basic goal of the bill before us. It will require the VA to investigate whether certain diseases are associated with a veteran's exposure to radiation during military service. I urge all my colleagues to support this important legislation.

The PRESIDING OFFICER. The Chair will advise that under the previous order there is 1 hour of debate allocated for this bill, 30 minutes for the manager of the bill, of which 25 minutes remain, and 30 minutes to the Senator from Pennsylvania, who is now recognized.

Mr. SPECTER. Mr. President, I thank the Chair for that advice. I am pleased to reciprocate some advice that we are going to take much less time so that we can move ahead. This is important compromise legislation. I again commend my colleague from Arizona, Senator DECONCINI, for his outstanding work and the outstanding work of Senator CRANSTON, who has chaired the

committee in such a hardworking manner.

The provisions on the so-called latency period as to radiation were crafted after considerable discussion among many of us, with considerable input from Senator SIMPSON and Senator MURKOWSKI. This is a very important legislative piece, and I think it reflects the tremendous concern and tremendous focus which the Veterans' Committees in the Senate and the House, Congress as a whole, are giving to veterans' issues.

Mr. President, as ranking Republican member of the Committee on Veterans' Affairs, I am pleased to support passage of S. 775, the Veterans Compensation Improvement Act of 1991, as amended by the committee. This legislation has evolved over the last 6 months to become a package of benefits for veterans who have been exposed to the harmful effects of radiation. In addition, the legislation contains a number of administrative changes for the Department of Veterans Affairs [VA] which will improve services to our Nation's veterans.

RADIATION PROVISIONS

Mr. President, this bill makes three important modifications to the work this committee has done to deal fairly with veterans who were exposed to ionizing radiation during service.

First, S. 775 would eliminate the so-called latency period between exposure to radiation and incurrence of disease in order for a disease to be considered a service-connected disability. Under current law, unless a radiogenic disease becomes manifest within 40 years of exposure to radiation, there is no presumption that the disease is connected to the exposure. When we enacted the atomic veterans provisions in 1988, this was good science. Later research has shown, however, that radiogenic diseases can in fact manifest themselves many years after exposure. This provision recognizes this new information and, as we always try to do on this committee, gives the benefit of the doubt to the veteran.

Second, the bill expands the list of diseases presumed to be service-connected to include cancer of the salivary gland and urinary tract. Again, this expansion reflects the current state of scientific knowledge in the area, and is based on long-term studies of Japanese survivors of the atomic explosions at Hiroshima and Nagasaki in World War II.

Third, the bill requires the Secretary to examine scientific evidence to determine if there were activities involving the exposure of servicepersons to radiation prior to 1970 which warrant further study, in order to determine whether such veterans suffer disabilities as a result of that exposure. Specifically, the Secretary of Veterans Affairs would be required to direct VA's Advisory Committee on Environmental Hazards to examine all material relating to the exposure of veterans to ionizing radiation before 1970. In turn, the Advisory Committee would make recommendations to the Secretary for further study and additional investigation of activities which may have exposed service members to ionizing radiation. The Secretary would then submit a report to Congress on plans for further study, along with a timetable for that study.

I know that questions have been raised about exposure to radiation other than in the context of nuclear explosions. I look forward to the work of the Secretary and the Advisory Committee to lead us in a measured way to the scientific investigations of such activities.

ADMINISTRATIVE PROVISIONS

This bill also makes a number of administrative changes that will enable VA to provide quality services to our veterans.

First, the bill clarifies the scorekeeping rule for future cost-of-living increases in compensation rates. This provision would restore the rule, changed under last year's budget agreement, which requires the Office of Management and Budget to assume normal rounding; that is, to the nearest whole dollar, in setting the baseline figure in the veterans' compensation COLA. Under present law, the "rounding down" used by OMB can have the effect of attributing excess direct-spending costs to VA, which could trigger as pay-as-you-go sequestration when our committee COLA legislation is based on normal rounding. This provision would restore prior scorekeeping practice and ensure that disabled veterans and their survivors receive a full cost-of-living allowance.

Second, the bill would allow VA to obtain from financial institutions address information for individuals to whom VA is paying benefits through electronic funds transfer or other direct-deposit means. This would allow VA to verify the address information of veterans and their survivors who are receiving pension and compensation payments to prevent abuses or fraudulent activities.

Third, the bill would also extend, through December 31, 1996, VA's legal authority to operate a regional office in the Republic of the Philippines. The statutory authority under which VA currently operates a regional office in Manila, through which VA administers compensation, pension, and education benefits to Filipinos who were in or attached to U.S. Armed Forces during World War II, expired on September 30, 1991.

Fourth, the bill would change the title of VA's Chief Benefits Director and Chief Medical Director to "Under Secretary for Benefits" and "Under Secretary for Health," respectively, in order to clarify the authority of these positions within VA and with counterparts within the executive branch.

Finally, the bill would make uniform rules for veterans' pensions for veterans and their survivors who are receiving care in Medicaid-covered nursing homes. Prior to the enactment of the Omnibus Budget Reconciliation Act of 1990 [OBRA], veteran pensioners in non-VA nursing homes who received Medicaid did not have their pension benefits reduced, but were required to apply their VA pension toward the cost of their nursing home care. Section 8003 of OBRA limited pension payments to $90 per month in the case of Medicaid-eligible veterans with no dependents in nursing homes participating in Medicaid. The benefit to the veterans under OBRA is that his or her $90 cannot be applied to the nursing home costs. S. 775 would apply that same rule to recipients of survivor's pension.

Mr. President, this bill is the result of a lot of hard work and thoughtful compromise by several committee members. I would like to thank Senator CRANSTON and his staff, especially Neil Koren, Michael Cogan and Ed Scott. I would also like to thank Senators SIMPSON and MURKOWSKI for their efforts in reaching a compromise on the radiation provisions, and Lisa Moore and Dave Balland of their staffs. Finally, I would like to thank the hard work of my Veterans' Committee staff, especially Hannah Thompson, Scott Waitlevertch, and Tom Roberts.

I urge my colleagues to support this important measure.

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I urge my colleagues to support S. 775, the proposed Veterans Service-Connected Compensation Improvements Act of 1991, as reported by the Committee on Veterans' Affairs on August 2, 1991, and as it would be revised by a committee modification. This measure as reported, which I will refer to as the committee bill, would have provided a cost-of-living adjustment [COLA] for veterans receiving disability compensation and for veterans' survivors who receive dependency and indemnity compensation; expanded compensation benefits for veterans who develop diseases possibly related to exposure to ionizing radiation during military service; and made miscellaneous improvements in veterans programs.

As my colleagues are aware, the Congress has enacted a fiscal year 1992 veterans' compensation COLA in Public Law 102-152. My statement on that legislation at the time of Senate action on it appears on page S 15303 of the RECORD for October 28, 1991. The committee modification will delete the COLA provisions, and I will not make further mention of the COLA on this occasion.

Mr. President, the committee bill is derived from S. 775 as introduced; part

B of title I of S. 127, the proposed Veterans Benefits and Health Care Improvements Act of 1991; and original proposals adopted at the committee's June 26 meeting. Because the provisions of the committee bill are described in detail in the committee's report accompanying this measure, Senate Report No. 102-139, I will only summarize the bill, briefly discuss its provisions, and describe the committee modification.

SUMMARY OF PROVISIONS

Mr. President, the committee bill as it will be modified contains provisions that would:

First, clarify that, in the computation of the sequestration baseline under section 257(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, it is to be assumed that the veterans' COLA for each rate of compensation will be rounded to the nearest whole dollar.

Second, extend to certain veterans' survivors who are receiving VA pension the provision that limits monthly pension payments to $90 for Medicaid-eligible veterans receiving VA needs-based pension who have no dependents and who are in nursing homes participating in Medicaid. This provision would take effect on November 1, 1991, and expire on September 30, 1992, the same date on which the limit the veterans' pension will expire.

Third, effective May 1, 1992, repeal the requirement that, to be presumed service connected, diseases listed in section 312(c) of title 38 of veterans who participated in certain radiation-risk activities become at least 10-percent disabling within a specified time after the veterans' last exposure to radiation.

Fourth, also effective May 1, 1992, add to the list of diseases in section 312(c) cancer of the salivary gland and cancer of the urinary tract.

Fifth, require the Secretary, within 30 days after enactment, to direct the VA Advisory Committee on Environmental Hazards to examine all scientific and other information concerning veterans' exposure to ionizing radiation during military service prior to 1970 (other than during participation in nuclear weapons testing or the occupation forces in Hiroshima or Nagasaki, which already are covered as radiation-risk activities under section 312(c)) and advise the Secretary of any activities for which additional evaluation is likely to be scientifically appropriate and feasible.

Sixth, require the Secretary, upon request of the Advisory Committee and after seeking the assistance of the Secretary of Defense, to submit to the Advisory Committee information regarding veterans' exposure to radiation during military service prior to 1970.

Seventh, require the Advisory Committee to transmit its advice to the Secretary by September 30, 1992.

Eighth, require the Secretary, after receiving the Advisory Committee's advice, to determine which of these other activities will be subject to further evaluation under the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98-542, and to prepare a plan for, and deadline for completing, the evaluation. Following this evaluation, the Secretary would determine whether veterans who participated in these other radiation activities should be entitled to compensation for radiogenic diseases.

Ninth, require the Secretary to report to the Senate and House Committees on Veterans' Affairs no later than April 1, 1993, the Secretary's plans for further evaluation of the activities.

Tenth, authorize VA to obtain from financial institutions the current mailing addresses of certain VA beneficiaries whose benefits are deposited into their accounts through direct deposit or electronic fund transfer.

Eleventh, extend from September 30, 1991, to December 31, 1996, the Secretary's authority to maintain the VA regional office in the Philippines.

Twelfth, give to the position of Chief Medical Director the additional title Undersecretary for Health and to the position of Chief Benefits Director the additional title Undersecretary for Benefits.

CLARIFICATION OF SCOREKEEPING RULE FOR COST-OF-LIVING INCREASES IN COMPENSATION RATES

Mr. President, section 2 of the committee bill as modified, which was section 3 of the reported bill, would clarify that, for purposes of the sequestration baseline under section 257(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by section 13101(e) of the Budget Enforcement Act of 1990, the veterans' compensation COLA for each rate of compensation is assumed to be rounded to the nearest whole dollar.

As my colleagues know, the Budget Enforcement Act gave the Office of Management and Budget responsibility for determining the sequestration baseline for the new pay-as-you-go budget rules. The new rules require sequestration of certain direct-spending funds by the amount equal to net spending—new direct spending minus any offsetting new receipts or spending reductions—in excess of the direct spending that otherwise would have occurred under current law and certain established practices.

The committee learned in VA's testimony for our June 12, 1991, hearing that OMB's fiscal year 1992 baseline assumes that all veterans' compensation rate increases will be rounded down to the next lower whole dollar. This would have the effect of attributing direct spending costs, which could trigger a sequestration, to COLA legislation that provides for normal rounding of compensation rates, such as, rounding, up or down, to the nearest whole dollar.

Ever since the enactment of the Congressional Budget Act of 1974, the Congressional Budget Office has had the responsibility for estimating the cost of legislation for purposes of the enforcement of Congressional Budget Act and Gramm-Rudman-Hollings rules governing the consideration of legislation in the Senate or the House of Representatives. CBO's baseline always has assumed that the amount of the veterans' compensation COLA for each rate of compensation would be rounded in the normal way. Under CBO's interpretation of the Budget Enforcement Act, CBO continues to assume normal rounding.

OMB's rule would reduce the committee's and the Congress' ability to set priorities for veterans' entitlements. In the past, the committee occasionally has recommended rounding down compensation rates that would, through normal rounding, be rounded up. Since the baseline assumed normal rounding, this produced savings that the committee either applied to its reconciliation instructions under a particular budget resolution or to expansions of other veterans' entitlement programs.

For example, as recently as last October, both CBO and OMB credited the committee with savings for proposing the rounding down of the fiscal year 1991 COLA.

More important, OMB's baseline would force the Congress to make significant cuts in other programs in order to provide a full, normally rounded compensation COLA to service-disabled veterans and their survivors. For just the 3.7-percent COLA we enacted recently, the difference between rounding down and rounding normally would be $21 million in budget authority for fiscal year 1992 and almost $25 million for each year thereafter. Each year's difference would be additive, so that, at this rate, the OMB rule could force cuts of over $230 million during the next 4 fiscal years.

Mr. President, the Congress should not sit by idly while OMB unilaterally imposes a rule that treats those who were disabled as a result of service to their country worse than recipients of Social Security and other Federal benefits periodically adjusted by law. Section 2 of the modified committee bill would ensure that we will not.

PENSION FOR VETERANS IN MEDICAID-ELIGIBLE NURSING HOMES

Mr. President, section 3 of the committee bill as modified, which was section 4 of the reported bill, would extend to survivors who receive VA's needs-based pension the provisions of section 8004 of the Omnibus Budget Reconciliation Act of 1990 [OBRA], which limit monthly pension payments to $90 a month for Medicaid-eligible veterans receiving VA pension who have no de-

pendents and who are in nursing homes participating in Medicaid, except those who are in State veterans homes. The provision would take effect on November 1, 1991, and would expire on September 30, 1992, the same date on which section 8003 of OBRA will expire. The savings resulting from this provision would offset all new direct spending for fiscal year 1992 that would result from enactment of the committee bill and from other veterans legislation already enacted by the Congress.

VA pension is provided for needy surviving spouses of wartime veterans. The amount of pension paid depends on the income of the survivor. As of March 1991, 471,180 surviving spouses and 53,557 children of deceased veterans were receiving VA pension.

Prior to the enactment of OBRA, veterans in non-VA nursing homes who received Medicaid did not have their pension benefits reduced, but were required under the Medicaid law to apply their VA pension toward the cost of their nursing-home care.

Section 8003 of OBRA applied the $90-a-month limit on pension payments to Medicaid-eligible veterans who have no dependents and who are in nursing homes that participate in Medicaid.

The OBRA provision does not reduce the amount of VA pension that a veteran actually receives, since the pension payments affected by OBRA were passed through to the nursing home in which the veteran was receiving care. Following implementation of section 8003, Medicaid payments fully replace the VA pension payments for the veteran's nursing-home care.

From the veteran's standpoint, the OBRA provision protects $90 a month of the VA pension from various State Medicaid rules that required the veteran to use almost all of the pension for his or her care, except for a personal allowance, an amount that is less than $90 a month in every State. Thus, the OBRA provision effectively ensures that veterans whose VA pension is reduced under the provision actually receive more personal spending money than they were allowed to keep under prior law. This provision would extend this advantage to survivors who receive VA pension.

COMPENSATION FOR DISEASES POSSIBLY RELATED TO EXPOSURE TO IONIZING RADIATION

Mr. President, the committee bill contains two provisions relating to compensation for veterans who were exposed to radiation during military service and who have developed certain diseases possibly related to that exposure. I first proposed these provisions in S. 2556 during the 101st Congress and the committee later incorporated them, with some modification, in S. 2100 in that Congress. For a detailed discussion of these provisions, I refer my colleagues to my statements in the RECORD of May 1, 1990, beginning on page S5491, concerning introduction of S. 2556, and of October 10, 1990, beginning on page S14874, for my statement concerning S. 2100 as reported by the committee.

Section 5 of the committee bill as modified, which was section 6 of the reported bill, would make a necessary update to the list of diseases presumed to be service connected for certain radiation-exposed veterans and the time limit by which those diseases must appear. Thus, the committee bill would add cancer of the salivary gland and cancer of the urinary tract to the list and would repeal the requirement that a cancer must have become at least 10-percent disabling within 40 years after the veteran's participation in one of the specified radiation-exposure activities in order to be presumed service connected.

In 1988, the Congress enacted the Radiation-Exposure Veterans Compensation Act, Public Law 100-321, which established a presumption of service connection for 13 diseases related to exposure to radiation. The bill heavily relied on the findings from the 1980 report of the National academy of Sciences [NAS] Committee on the Biological Effects of Ionizing Radiation [BEIR]. That report, known as BEIR III, represented the best information available at that time on the increased cancer risks faced by individuals exposed to ionizing radiation.

In late December 1989, NAS released the BEIR committee's latest report, BEIR V. The report contained new and important analyses of the effects of radiation, based on recently conducted studies, new analyses of historical data, and an additional 10 years of data.

The BEIR V findings are very significant. The report estimates that lifetime excess cancer risk following low-level radiation exposure is three to four times greater than previously thought. This heightened concern about the health effects of low-level ionizing radiation supports the approach to compensation that the Congress adopted in Public Law 100-321.

Cancer of the salivary gland is rare in the United States. National Cancer Institute data indicate an annual incidence of 1.2 cases per 100,000 U.S. males. BEIR V found a dose-dependent increase in salivary-gland cancer in Japanese atomic bomb survivors that indicated relatively high susceptibility of salivary glands to radiation-induced carcinogenesis.

Urinary-tract cancers are more common. For example, the annual incidence rate for urinary bladder cancer is 6.1 per 100,000 U.S. males and the incidence of kidney cancer is 4.6 per 100,000 U.S. males. BEIR V data demonstrate notable associations between bladder and kidney cancer and radiation exposure. The data show an especially strong, dose-dependent connection between radiation and bladder cancer.

BEIR V also shows that the current latency-period limitation in section 312(c) no longer is supportable. The report presents results from a statistical model of Japanese atomic-bomb survivors indicating that, although the leukemia mortality rate peaked within 10 years after exposure, a statistically significant increased mortality rate has persisted, albeit at a diminished level. BEIR V found that the increased risk of death persists much longer than previously suspected—perhaps indefinitely.

VA's testimony during the June 12 hearing supported provisions in the committee bill adding presumptions of service connection for cancer of the salivary gland and cancer of the two major organs of the urinary tract, the bladder and the kidney. VA reserved judgment on the three other organs of the urinary tract, the renal pelvis, ureter, and urethra, pending review by the VA Advisory Committee at its next meeting. All of the veterans service organizations supported these provisions at the hearing.

The committee bill would update the 1988 law to ensure it provides presumptions of service connection for any disease shown to be associated with radiation, but not strongly associated with other risk factors. This is the same standard applied in drafting the Senate provisions that were enacted in Public Law 100-321.

My goal is to continue to ensure that the Government's response to the health problems of veterans who were exposed to ionizing radiation during their service takes into account the latest scientific knowledge about the effects of ionizing radiation, while giving these veterans the benefit of reasonable doubt. I believe that this provision accomplishes that objective.

Section 6 of the committee bill as modified, which is derived from section 7 of the reported bill, would extend the current statutory framework for evaluating the effects of exposure to ionizing radiation to activities currently not defined as a radiation-risk activities in title 38, United States Code. Under section 312(c) if title 38, radiation-risk activities include only onsite participation in an atmospheric nuclear weapons test, the occupation of Hiroshima or Nagasaki, and, in some cases, internment as a POW in Japan.

Reputable scientists, including some of those involved in the BEIR V report, recently have raised questions about many types of activities not covered by the 1988 law that might expose service members or members of the general population to an increased risk of certain diseases, primarily cancer.

For example, an article in the March 1, 1990, New York Times reported that independent measurements of radiation received by flight crews on commercial—and thus, presumably, military—aircraft exceed some Federal ra-

diation standards. The data, presented to the aviation subcommittee of the Society of Automotive Engineers aeronautical section, confirmed a 1989 estimate by the Federal Aviation Administration that some pilots and flight attendants were exposed, during 1954 through 1966, to dangerous levels of ionizing radiation.

The committee also has received expressions of concern from veterans and survivors of veterans who might have been exposed to radiation during their service aboard U.S. Navy ships that took part in the disposal of radioactive waste or aboard nuclear-powered submarines and surface ships.

Navy documents confirm that some individuals were exposed to potentially hazardous levels of radiation during service. Adm. Bruce DeMars, Director of the Naval Nuclear Propulsion Program, submitted written testimony for the committee's June 12 hearing that included a report issued by the Naval Nuclear Propulsion Program of the Department of the Navy entitled, "Occupational Radiation Exposure From U.S. Naval Nuclear Plants and Their Support Facilities" (Rep. NT-91-2, Feb. 1991). The report identified two broad categories of occupations in which some service personnel and civilians were exposed to more than 5 REM/year of ionizing radiation—the Navy's current limit for exposure to radiation.

Despite VA's indications to the committee that VA's Advisory Committee would review other activities involving radiation, the Secretary has not directed the Advisory Committee to undertake such a review. VA was a party to the negotiations that led to the compromise that is included in the committee modification of the reported bill and, I believe, does not oppose the revised provision.

There is not yet sufficient evidence of an association between radiogenic cancers and exposure to radiation during these other activities to extend the coverage of section 312(c) of title 38 to include participants in the activities, but these activities should not be ignored.

Thus, the committee bill, as it will be revised by the committee modification, would create a procedure for considering the effects of participation in activities involving possible exposure to radiation during military service, other than the occupation of Nagasaki or Hiroshima or onsite participation at a nuclear weapons test.

Mr. President, even before the latest revisions in this provision, we made considerable changes to address the valid concerns of the committee's ranking minority member, Mr. SPECTER, VA, and others.

Mr. President, the latest revisions preserve the basic goal of the provision, which is to require VA to investigate and determine whether certain radiogenic diseases are connected to a veteran's military service. The measure still would modify the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98-542. I intend that VA, in carrying out this provision, will incorporate the procedures required under that law. This would include the requirement that any decision by the Secretary under this provision must give the veteran the benefit of all reasonable doubt, as the Federal court held in Nehmer versus Department of Veterans Affairs. The regulations issued to comply with the Nehmer decision also would apply to the amendments to Public Law 98-542 made by this provision.

COMMITTEE MODIFICATION

Mr. President, in addition to striking the COLA provision, the committee modification of the reported bill deletes two provisions the Congress already has enacted in Public Law 102-86, which was signed by the President on August 14, 1991. The first provision expanded compensation for radiation-related diseases to include reservists who were serving on active duty for training or inactive-duty training during on-site participation in a nuclear weapons test. The second provision corrected an inequity in section 8004 of the Omnibus Budget Reconciliation Act of 1990, which eliminated reinstatement of VA-benefits eligibility for formerly remarried surviving spouses and certain married children whose disqualifying marriages ended before November 1, 1990. I congratulate my good friend Senator GRAHAM for his leadership on the remarriage provision.

The modification adjusts the effective date of section 6 of the committee bill from January 1, 1992, to May 1, 1992, to offset the cost of all legislation within the committee's jurisdiction that the Congress has enacted or we expect to enact through the end of fiscal year 1992.

The modification also includes a provision based on administration requested legislation transmitted in a July 13, 1991, letter from VA Secretary Edward J. Derwinski to Vice President DAN QUAYLE, that would amend the Right to Financial Privacy Act of 1978 [RFPA], Public Law 95-630. RFPA was intended to protect bank customers from undue Government intrusion into their bank records. RFPA contains several exceptions to its general protections. This provision would authorize VA to request and obtain from financial institutions current mailing addresses of certain VA beneficiaries whose VA benefits are deposited into their account through direct deposit.

Over 1.5 million veterans and their families receive VA benefits by direct deposit. This method of payment saves time and administrative costs and provides improved convenience and safety for beneficiaries. Delays and administrative costs can result when these beneficiaries fail, to keep VA advised of changes in their mailing address. In many cases, these delays and costs could be avoided if VA could get current addresses from the financial institutions.

Mr. President, I am concerned about any legislation that makes exceptions to privacy protections. I believe, however, that this provision is crafted narrowly enough to protect beneficiaries from unwarranted intrusions and will help ensure timely payment of their benefits.

The committee modification also would add a new section 7 to extend from September 30, 1991, to December 31, 1996, the Secretary's authority to maintain the VA regional office in the Philippines.

Mr. President, the final addition contained in the committee modification will become section 8 of the bill. This section would revise the statutory designations of the position of Chief Medical Director as "Undersecretary for Health, who is the Chief Medical Director" and the position of Chief Benefits Director as "Undersecretary for Benefits, who is the Chief Benefits Director." The change is intended to make clear that these positions have undersecretary rank within VA. In the past, I have opposed any change in the traditional titles for these positions, primarily because it is important to emphasize the nonpolitical nature of the two positions.

I have been urged repeatedly to reconsider my position, primarily because of confusion within the VA regarding the incumbents' status in comparison to the assistant secretaries and because the lack of clarity as to CMD's and CBD's rank sometimes impairs their ability to deal effectively with assistant secretaries and undersecretaries in other cabinet departments.

Thus, I have agreed to propose a provision, in the committee modification, that would designate these officials undersecretaries, but also retain the traditional titles of CMD and CBO.

CONCLUSION

Mr. President, it has been a pleasure to work with the distinguished ranking minority member of the committee, Senator SPECTER, and I am very grateful to him and the other members of the committee for their help and cooperation in developing this legislation. I express my appreciation to the staff who worked so hard on this legislation—on the minority side, Scott Waitlevertch, Charlie Battaglia, Bill Tuerk, and Tom Roberts; the committee's editorial director, Roy Smith; and on the majority staff, Neil Koren, Michael Cogan, Bill Brew, and Ed Scott.

Mr. President, I am delighted that we have been able to develop a measure that will improve benefits for veterans who have developed certain diseases possibly related to exposure to radi-

ation and that will make other improvements in VA programs.

Mr. President, I urge all of my colleagues to support this important measure.

Mr. THURMOND. Mr. President, I rise today to voice my support for S. 775, the Veterans' Benefits and Improvement Act of 1991. This measure will facilitate the administration of compensation and pension programs of the Department of Veterans' Affairs, as well as expand benefits available to our deserving veterans. Specifically, S. 775 permits the disclosure to the VA of certain financial institutions' information on the location of veterans who receive disability compensation, dependency and indemnity compensation or pension benefits. It also clarifies that the provision in current law requiring a reduction in pension benefits of certain survivors of veterans who are receiving Medicaid-covered nursing home care expires in 1992. In addition, this measure will extend the authority of the Secretary of Veterans' Affairs to maintain the regional office in the Philippines.

Mr. President, S. 775 expands the list of diseases presumed to be service connected for certain radiation-exposed veterans and eliminates the latency-period limitations connected with these diseases. It also directs the Department of Veterans' Affairs Advisory Committee to review all available scientific studies and other relevant information relating to the exposure of certain veterans to ionizing radiation during their service. On the basis of this review, the committee shall submit to the Secretary of Veterans' Affairs a report containing the recommendations of the Advisory Committee.

Mr. President, I am pleased that we are considering this measure which will expand the benefits available to our veterans who have in any way been disabled as a result of their patriotic duty in our Armed Forces, and assist the Department of Veterans' Affairs in the administration of its duties. I urge my colleagues to support this important measure.

Mr. MURKOWSKI. Mr. President, as the former ranking Republican of the Veterans' Affairs Committee, I rise today to discuss some provisions contained in S. 775.

RADIATION

Mr. President, first I am especially pleased that Senator CRANSTON and I—with the assistance of Senators SPECTER and SIMPSON—worked out an agreement on section 7 of S. 775. This agreement—as reflected in the committee amendment—is a substitute for section 7 of the committee reported bill. I believe that it accomplishes our goal of providing VA with some direction in the area of examining potential health effects of exposure to ionizing radiation.

The provision is new section 7 focuses on those veterans who may have been exposed to ionizing radiation before January 1, 1970. This clearly illustrates that the committee does not question DOD's current methods and procedures for measuring the amount of exposure which active duty military personnel receive. However, we are concerned that for certain groups of veterans the amount of exposure is less certain, that is those who served in the military before 1970.

UNDER SECRETARIES

I am pleased that the committee amendment contains a provision which would change the titles of two very key VA officials. This amendment would designate as Under Secretaries the following positions: VA's Chief Medical Director and VA's Chief Benefits Director. This would not mean an increase in salary for those two positions.

During the last Congress, I introduced a bill which would have provided for this title change. Unfortunately, the Committee on Veterans' Affairs failed to act on it.

I am pleased that we are now able to accommodate Secretary Derwinski's desire to change the names of these important positions.

Mr. DECONCINI. Mr. President, I know of no further debate on the bill before the Senate, and I yield back the remainder of my time on this side, Mr. President.

Mr. SPECTER. Before yielding back the remainder of my 30 minutes, Mr. President, I inquire as to how much I am yielding back.

The PRESIDING OFFICER. The Senator from Pennsylvania is prepared to yield back 28 minutes.

Mr. DECONCINI. Does the Senator want credit for that for some other time?

Mr. SPECTER. The Senator asks me if I want credit at some other time. The answer to that is yes. I yield back 28 minutes having used only 2.

Mr. DECONCINI. I ask third reading of the bill.

The PRESIDING OFFICER. All time is yielded back with appropriate provisos.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as modified.

The committee amendment in the nature of a substitute, as modified, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 775

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Benefits Improvement Act of 1991".

SEC. 2. CLARIFICATION OF SCOREKEEPING RULE FOR COST-OF-LIVING INCREASES IN COMPENSATION RATES.

For the purpose of calculating the baseline under section 257(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 907(b)) with respect to the increase in veterans' compensation for a fiscal year, the amount by which each rate of compensation is increased is assumed to be rounded to the nearest whole dollar.

SEC. 3. REDUCTION IN PENSION FOR VETERANS' SURVIVORS WHO ARE RECEIVING MEDICAID-COVERED NURSING HOME CARE.

(a) REDUCTION IN PENSION.—Paragraph (2) of section 5503(f) of title 38, United States Code, is amended to read as follows:

"(2)(A) Not more than $90 per month may be paid under chapter 15 of this title to or for any person described in subparagraph (B) for any period that a nursing facility furnishes such person with services covered by a Medicaid plan. The restriction in the preceding sentence applies to periods after the month of the person's admission to the nursing facility.

"(B) A person referred to in subparagraph (A) is a person—

"(i) who is covered by a Medicaid plan for services furnished such person by a nursing facility; and

"(ii) who is (I) a veteran who has neither spouse nor child, or (II) a surviving spouse who has no child.".

(b) CONFORMING AMENDMENTS.—Section 5503(f) of such title is amended as follows:

(1) In paragraph (3)—

(A) by striking out "a veteran" and inserting in lieu thereof "a person referred to in paragraph (2)(A)"; and

(B) by striking out "such veteran under paragraph (2) of this subsection" and inserting in lieu thereof "such person under such paragraph".

(2) In paragraph (4)—

(A) by striking out "A veteran" and inserting in lieu thereof "A person referred to in paragraph (2)(A)";

(B) by striking out "the veteran" both places it appears and inserting in lieu thereof "the person"; and

(C) by striking out "the veteran's" and inserting in lieu thereof "the person's".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on November 1, 1991, and apply with respect to months after October 1991, and shall expire in accordance with section 5503(f)(6) of title 38, United States Code.

SEC. 4. ACCESS TO INFORMATION NECESSARY FOR THE ADMINISTRATION OF CERTAIN VETERANS' BENEFITS LAWS.

Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end the following new subsection:

"(p)(1) The provisions of this title do not apply to a disclosure of information requested pursuant to paragraph (2).

"(2) Subject to paragraph (3), the Secretary of Veterans Affairs may request a financial institution to disclose to the Department of Veterans Affairs the name and address of any customer who is receiving or has received payment of disability compensation, dependency and indemnity compensation, or pension under the provisions of title 38, United States Code, or section 10 of Public Law 85-857 (72 Stat. 1263) by direct deposit in the customer's account at that financial institution.

"(3)(A) The Secretary may make a request referred to in paragraph (2) only if the Secretary determines that the requested information—

"(i) is necessary in order for the Department of Veterans Affairs to administer the provisions of law referred to in such paragraph; and

"(ii) cannot be secured by a reasonable search of records and information of the Department.

"(B) The Secretary shall include a certification of the determination referred to in subparagraph (A) in each request presented to a financial institution.

"(4) Information disclosed pursuant to a request referred to in paragraph (2) may be used solely for the purpose of the administration of benefits programs under laws administered by the Secretary of Veterans Affairs if, except for the exemption in paragraph (1), the disclosure of that information would otherwise be prohibited by any provision of this title.

"(5) For the purposes of this subsection, the term 'direct deposit' means a process in which funds are disbursed (by electronic transfer or otherwise) from the Treasury of the United States to a financial institution and are deposited in one or more accounts in that financial institution pursuant to instructions provided by the Secretary of the Treasury.".

SEC. 5. EXPANSION OF LIST OF DISEASES PRESUMED TO BE SERVICE-CONNECTED FOR CERTAIN RADIATION-EXPOSED VETERANS AND ELIMINATION OF LATENCY-PERIOD LIMITATIONS.

(a) IN GENERAL.—Section 1112(c) of title 38, United States Code, is amended—

(1) in paragraph (1), by striking out "to a degree" and all that follows through "subsection)";

(2) in paragraph (2), by adding at the end the following new clauses:

"(N) Cancer of the salivary gland.

"(O) Cancer of the urinary tract.";

(3) by striking out paragraph (3); and

(4) by redesignating paragraph (4) as paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on May 1, 1992.

SEC. 6. IDENTIFICATION OF CERTAIN ACTIVITIES RELATING TO EXPOSURE TO IONIZING RADIATION.

The Veterans' Dioxin and Radiation Exposure Compensation Standards Act (38 U.S.C. 1154 note) is amended by adding at the end the following new section:

"IDENTIFICATION OF ACTIVITIES INVOLVING EXPOSURE BEFORE JANUARY 1, 1970"

"Sec. 10. (a) IDENTIFICATION OF ACTIVITIES INVOLVING EXPOSURE BEFORE JANUARY 1, 1970.—(1) In order to determine whether veterans (other than veterans who participated in the tests or occupation activities referred to in section 5(a)(1)(B)) suffer from disabilities as a result of the exposure of such veterans to ionizing radiation during the active military, naval, or air service of such veterans that occurred before January 1, 1970, the Advisory Committee established under section 6 shall—

"(A) review all available scientific studies and other relevant information relating to the exposure of such veterans to ionizing radiation during such service; and

"(B) on the basis of such review, submit to the Secretary of Veterans Affairs a report containing the recommendation of the Advisory Committee on the feasibility and appropriateness for the purpose of the determination under this paragraph of any additional investigation with respect to any activity of such veterans during such service.

"(2) Upon the request of the Advisory Committee, the Secretary of Veterans Affairs (after seeking such assistance from the Secretary of Defense as is necessary and appropriate) shall make available to the Advisory Committee records and other information relating to the service referred to in paragraph (1) that may assist the Advisory Committee in carrying out the review and recommendation referred to in that paragraph.

"(3) The Advisory Committee shall submit to the Secretary of Veterans Affairs the report referred to in paragraph (1)(B) not later than September 30, 1992.

"(b) INVESTIGATION PLAN AND REPORT OF SECRETARY OF VETERANS AFFAIRS.—(1) Upon receipt of the report referred to in subparagraph (B) of subsection (a)(1), the Secretary of Veterans Affairs shall—

"(A) identify which of the activities referred to in that subparagraph, if any, that the Secretary intends to investigate more fully for the purpose of making the determination referred to in that subsection; and

"(B) prepare a plan (including a deadline for the plan) to carry out that investigation and make that determination.

"(2) Not later than April 1, 1993, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

"(A) a list of the activities identified by the Secretary pursuant to paragraph (1)(A) and the basis of such identification; and

"(B) the plan referred to in paragraph (1)(B).".

SEC. 7. EXTENSION OF AUTHORITY OF SECRETARY OF VETERANS AFFAIRS TO MAINTAIN THE REGIONAL OFFICE IN THE PHILIPPINES.

Section 315(b) of title 38, United States Code, is amended by striking out "September 30, 1991" and inserting in lieu thereof "December 31, 1996".

SEC. 8. REDESIGNATION OF CERTAIN POSITIONS WITHIN THE DEPARTMENT OF VETERANS AFFAIRS.

(a) REDESIGNATION OF POSITION OF CHIEF MEDICAL DIRECTOR.—Section 305(a)(1) of title 38, United States Code, is amended by striking out "a Chief Medical Director," and inserting in lieu thereof "an Under Secretary for Health, who is the Chief Medical Director and".

(b) REDESIGNATION OF POSITION OF CHIEF BENEFITS DIRECTOR.—Section 306(a) of such title is amended by striking out "a Chief Benefits Director," and inserting in lieu thereof "an Under Secretary for Benefits, who is the Chief Benefits Director and".

(c) CONFORMING AMENDMENT.—Section 5314 of title 5, United States Code, is amended by striking out the following:

"Chief Medical Director, Department of Veterans Affairs.

"Chief Benefits Director, Department of Veterans Affairs.";

and inserting in lieu thereof the following:

"Under Secretary for Health, Department of Veterans Affairs.

"Under Secretary for Benefits, Department of Veterans Affairs.".

(d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall take effect on the date of the enactment of this Act.

The title was amended so as to read: "A bill to improve the compensation of certain veterans for exposure to ionizing radiation, to improve the administration of veterans benefits programs, and for other purposes.".

Mr. DECONCINI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

VETERANS' POSTTRAUMATIC STRESS DISORDER TREATMENT ACT

The Senate continued with the consideration of the bill.

Mr. DECONCINI. Mr. President, regular order would put us back on S. 869, is that correct?

The PRESIDING OFFICER. Regular order is consideration of S. 869.

Mr. DECONCINI. I thank the Chair.

Mr. President, I ask unanimous consent that the motion to reconsider the vote on the amendment offered by myself on behalf of the Senator from Michigan [Mr. RIEGLE], amendment No. 1360, be reconsidered.

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

The motion to lay that motion on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments to S. 869?

Mr. DECONCINI. Mr. President, there will further amendments that the manager and ranking member know about offered by the Senator from Wyoming. That will be in a few minutes when he returns to the floor.

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

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

ORDER OF PROCEDURE

Mr. SPECTER. Mr. President, in the absence of any other business to come before the Senate on the pending veterans' legislation, I ask unanimous consent that I may speak as if in morning business for a period of up to 10 minutes.

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

Mr. SPECTER. Mr. President, I might say, we are ready to proceed with any other amendments on the veterans' legislation. I will cease at that time so that the regular business of the Senate may be carried forward if as and when that occurs.

BASE CLOSURE COMMISSION

Mr. SPECTER. Mr. President, I wish to address a subject of great importance, the proceedings under the Base Closure Act. I had intended to do this in morning business, but since an opportunity now presents itself without taking the time of the Senate on another occasion, I will utilize approxi-

mately 10 minutes as of this moment if there is a intervening business.

Mr. President, the subject of base closures is of enormous importance to the United States for many reasons.

One is that it has great consequences for national defense. We have to be prepared to defend the United States as one of the foremost responsibilities of the Federal Government under the Constitution. It is a matter of great importance that there be a fair and reasonable procedure for making that determination, and a fair procedure in terms of the impact that base closures will have on various regions, States, and cities in the United States.

This has been a complicated political matter because of the difficulty in closing any base. The Congress has, therefore, elected to have a commission make base closure recommendations subject to review of the President, and then to have a single vote of the Congress, yes or no.

When that issue came before the Senate, Mr. President, I was one of the few Senators who voted against the proposition because I believe that the Congress ought to make the decision itself. In my 11 years here, we have never tried to do that. Before I was willing to cede that to a commission, I wanted to see the Senate and the House try to come up with a solution. But the will of the Congress was to the contrary, and the Base Closure Commission procedures were enacted. We now know the results of the Base Closure Commission proceedings.

Mr. President, I have been chagrined and shocked with what the Department of the Navy has done, and what the Base Closure Commission has done with respect to their responsibilities under the Base Closure and Realignment Act of 1990. This morning I will focus on the Philadelphia Navy Yard, although I could comment on the Naval Air Development Center in Warminster, PA, or on the consolidation issues relating to the Army Corps of Engineers offices, or on base closure recommendations affecting other parts of the country, such as Loring Air Force Base in the State of Maine.

The situation of the Philadelphia Navy Yard was especially acute, however, because the Navy withheld critical information from Members of Congress, and pursued a procedure where the General Accounting Office was not given the information necessary for them to carry out their statutory duties.

The Navy embarked on a course of conduct which rendered hearings before the Base Closure Commission meaningless. The Department of the Navy pressed the key Navy officials with knowledge of shipyards, Admiral Hekman, not to testify before the Commission.

As a result of these Navy actions, I concluded that there has been basic unfairness on the part of the Navy and the Base Closure Commission.

When this plot—I use that word with calculation—was unfolding, I took steps to ask counsel in Philadelphia to assist in the preparation of a lawsuit to litigate the issue of procedural fairness.

Those activities were begun in mid-June so that by the time the Base Closure Commission had acted in a way which had been clearly anticipated on June 30, 1991, we were in a position to move forward with a very important and a very serious lawsuit in the U.S. District Court for the Eastern District of Pennsylvania.

This litigation was undertaken pro bono—those famous Latin words "for free"—by the very distinguished law firm of Dilworth, Paxson, Kalish, and Kauffman in Philadelphia—the lead counsel being the former Pennsylvania Supreme Court Justice Bruce Kauffman and a distinguished battery of Philadelphia lawyers—David Pittinsky, Camille Spinello, Patrick Davish, Mark Nation. I also participated as one of the lawyers and argued the case when it came before a judge recently in the Federal court in the Eastern District of Pennsylvania.

The actions by the plaintiffs—and there were many from this body: Senator WOFFORD, Senator BRADLEY, Senator LAUTENBERG; and many from the House of Representatives: Congressman ANDREWS, Congressman WELDON, Congressman FOGLIETTA, Congressman COUGHLIN, Congressman BORSKI, and Congressman KOSTMAYER—were successful in getting expedited discovery and moving for an early argument day.

In the course of the discovery, we found numerous deliberate acts by the Navy in withholding critical information from Members of Congress and withholding critical information from the General Accounting Office, Mr. President.

The requirement of the base closure statute was that all information had to be submitted to the General Accounting Office so that the GAO could make an evaluation to check on whether the Department of the Navy and the other military departments had complied with the procedural mandates of base closure law.

The GAO filed its report, as required by law, on May 15, saying essentially that there was insufficient information for the GAO to come to any conclusion. Then a hearing was scheduled before the base closure commission in Washington on May 22.

I appeared with many others to present arguments on behalf of the Philadelphia Navy Yard, and other installations in my State, the Commonwealth of Pennsylvania.

On that same day, the Base Closure Commission itself issued two memoranda saying in effect that the Navy failed to supply sufficient information for the Commission to make any intelligent evaluation of the reasons for closing the Philadelphia Navy Yard. I shall not burden the RECORD now with those memoranda or the GAO report, because they have been put into the RECORD on prior occasions.

But suffice it to say that the hearing on May 22 was a meaningless sham, because Members of the House and Senate did not have the relevant information to make an intelligent, or intelligible, or any kind of a reasonable, realistic submission to the Base Closure Commission.

We have proceeded with the discovery, and what I intend to do is to put into the RECORD the plaintiff's "Request For Findings of Fact and Conclusions of Law." It is a voluminous record, for those who may be watching on C-SPAN II. I think it is important to put this into the CONGRESSIONAL RECORD, notwithstanding the cost that is involved, because it paints a lurid picture of deception by the Department of the Navy in concealing relevant information from Members of the House and the Senate, not to mention the directing, suggesting, encouraging of a key witness, Admiral Heckman, not to testify before the Base Closure Commission.

Mr. President, we have had one setback in the litigation. The court ruled that the issues could not be appealed, and that my submission and the submission of the Dilworth law firm is not in accordance with the law. The intent of the Congress, I think, is clear-cut that where there are procedural issues, whether or not the mandates of the statute have been complied with, such as providing information to the GAO, providing a fair hearing the submission and consideration of information to members, and many other procedural requirements, such items are clearly within the scope of judicial review.

The items which are not subject to judicial review are matters such as force structure, which is a highly technical subject and not within the purview of the courts; or the issue of the evaluation of the bases themselves, again, which is not within the purview of the courts and is a substantive matter.

The Senate, by a sense-of-the-Senate resolution, affirmed the propositions which I have just articulated in the House-Senate conference on the Defense appropriation bill and has made it a sense-of-the-Congress resolution. Therefore, I believe, ultimately, we will be vindicated on the matter now pending before the U.S. Court of Appeals for the Third Circuit.

Above and beyond the impact on the litigation, however, I think it is very, very important that the Members of Congress and the public at large see what the U.S. Navy has done, and see what has been sanctioned by the Secretary of Defense, to whom all of this

material has been directed, this Senator spoke personally, with the Secretary of Defense on the issue of the Navy's conduct. The issue of the Navy's conduct is important because these issues will certainly take the time of this body, the U.S. Senate, and the U.S. Congress, as we work through the provisions of the Base Closure Act as matters will arise in 1993 and 1995.

So, at this time, Mr. President, I ask unanimous consent that the record which, regretfully, is voluminous, running some 89 pages, be printed in the RECORD.

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

[In the U.S. District Court for the Eastern District of Pennsylvania]

SENATOR ARLEN SPECTER, ET AL., PLAINTIFFS, V. H. LAWRENCE GARRETT, III, SECRETARY OF THE NAVY, ET AL., DEFENDANTS

Civil Action No. 91-CV-4322, Hon. Ronald L. Buckwalter

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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AND

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I. FINDINGS OF FACT

A. Introduction

1. Founded in 1801, the Philadelphia Naval Shipyard (the "Philadelphia Shipyard") is a major industrial complex consisting of extensive and large carrier drydocks, piers, production shops, equipment and other assets valued at almost 3 billion dollars.

2. Operations at the Philadelphia Shipyard involve at least 47,000 jobs in the Philadelphia metropolitan area: 31,000 direct and indirect positions; 7,000 additional ship-associated personnel; and 9,000 direct and indirect positions associated with the Philadelphia Naval Station.

3. There are eight Naval Shipyards in the United States: Puget Sound, Norfolk, Philadelphia, Mare Island, Charleston, Pearl Harbor, Portsmouth and Long Beach.

4. Almost 15% of the total repair and modernization work performed by all eight Naval Shpyards is accomplished at the Philadelphia Shipyard.

5. From 1988 through the present, Philadelphia has led all eight Naval Shipyards in efficiency and cost-effectiveness, due largely to the excellence of its highly skilled work force.

B. The 1988 Base Closure Act

6. On May 3, 1988, then Secretary of Defense, Frank Carlucci, chartered the Defense Secretary's Commission on Base Realignment and Closure to evaluate and recommend a reduction in the military installations located in the United States. [Courter Dep. Ex. 14 at 1-1].

7. In October 1988, Congress passed and the President signed Public Law 100-526, the Defense Authorization Amendment and Base Closure and Realignment Act. [Couter Dep. Ex. 14 at 1-1].

8. The 1988 Commission on Base Realignment and Closure recommended that 86 bases be closed and 59 bases be realigned or partially closed [Courter Dep. Ex. 14 at 1-2].

9. These recommendations were strongly criticized by members of Congress and the public. [Courter Dep. Ex. 14 at 1-2 to 1-3].

10. Congressional critics contended that the 1988 base closure and realignment recommendation process had not been sufficiently open to public scrutiny. [Courter Dep. Ex. 2 and 14 at 1-3].

11. Congressional critics also charged that faulty data had been used to reach the 1988 final closure recommendations. [Courter Dep. Ex. 2 and 14 at 1-3].

12. Congressional critics believed that the General Accounting Office ("GAO") should have independently reviewed the data considered by the 1988 Commission on Base Realignment and Closure during the proceedings. [Courter Dep. Ex. 2 and 14 at 1-3].

C. The "SECDEF 17" List

13. In January 1990, an executive committee meeting was held by the Secretary of Defense, the Service Secretaries and the Chairman of the Joint Chiefs of Staff ("JCS") to review additional military installations for closure and/or realignment. [Tzavaras Dep. at 13-14].

14. On January 29, 1990, Secretary of Defense Cheney announced a proposal to close 36 additional bases in the United States (the "SECDEF 17 list"). [Courter Dep. Ex. 14 at 1-2; January 29, 1991 DoD New Release].

15. The SECDEF 17 list identified 17 Navy installations for closure, including the Philadelphia Shipyard. [Tzavaras Dep. at 12; January 29, 1991 DoD News Release].

16. The SECDEF 17 list had been approved by the Secretary of the Navy, H. Lawrence Garrett, III ("Garrett"). [Tzavaras Dep. at 14-15].

17. This was the first public announcement by the Secretary of Defense of a proposal to close the Philadelphia Shipyard. [Hekman Dep. at 9-10].

18. As Capt. Tzavaras—the action officer for base closure issues for the Chairman of the JCS—testified, when the SECDEF 17 list became public, "[i]t hit[] the presses, [went] into the Congress [and] everyone [got] all upset." [Tzavaras Dep. at 14-15].

D. The Secretary of the Navy's Appointment of a Three Star Admiral Advisory Committee

19. As a result of public and congressional criticism, a second executive committee meeting was held by the Secretary of Defense, the Service Secretaries and the Chairman of the JCS in the early summer of 1990 to discuss base closures. [Tzavaras Dep. at 15].

20. As a result of that meeting, Capt. Tzavaras testified that the Service staffs "again started churning and burning to produce a new recommendation" on base closures and realignments. [Tzavaras Dep. at 15].

21. In early 1990, the Secretary of the Navy directed the Vice Chief of Naval Operations to charter a Three Star Admiral Advisory Committee and subordinate Working Group to study and justify proposed base closures for the Navy (the "OPNAV" or "VCNO" study). [Tzavaras Dep. at 18-19; MacKinnon Dep. at 17].

22. The Advisory Committee was comprised of Three Star Admirals from various Navy commands, as well as the Comptroller of the Navy and some of his staff. [Hekman Dep. at 23-25; Tzavaras Dep. at 18-19]. The Three Star Group (also referred to as the "Advisory Committee") was headed by Vice Admiral Smith. [Hekman Dep. at 23-25].

E. The Three Star Admiral Advisory Committee's Creation of the July 1990 "Stealth List" Which Called for Closure of the Philadelphia Naval Shipyard

23. To redress the criticisms of the 1988 base closure process and Secretary Cheney's January 29, 1990 list of proposed closures, Congress began drafting new legislation to substantially amend the 1988 Defense Realignment and Base Closure Act by adding procedural safeguards. [Courter Dep. Ex. 14 at 1-3].

24. Between June and September, the prospect of some legislation on base closure being enacted was "evident." [Tzavaras Dep. at 15-16]. However, even as Congress was drafting the new law, the Navy's Three Star Admiral Advisory Group was continuing to develop its secret list of bases to close. [Tzavaras Dep. at 16].

25. On July 10, 1990, the Three Star Admiral Advisory Committee voted to retain Long Beach Naval Shipyard and to mothball the Philadelphia Shipyard.

"The Navy Inactive Fleet Maintenance Facility will remain at Philadelphia, as well as the propeller facility and the major tenant, NAVSSES. The drydocks are to be mothballed and retained for contingency purposes." [Loftus Dep. Ex. 1 at 5; Tzavaras Dep. at 19]. This action occurred only four months before the final passage of the 1990 Base Closure Act. [10 U.S.C. §2901 *et seq.*].

26. In the words of the Navy's own memorandum, the Advisory Committee's decisions to mothball the Philadelphia Shipyard and to retain the Long Beach Shipyard "were forwarded and concurred in by CNO [Chief of Naval Operations Kelso], SECNAV [Navy Secretary Garrett] and SECDEF [Defense Secretary Cheney]." However, "[f]or political reasons, these agreements have not been officially promulgated. A revised closure list is forthcoming; however, it may not be released until after the first of the calendar year." [Loftus Dep. Ex. 1 at 5].

27. Thus, the "stealth list" was born. [Loftus Dep. Ex. 1].

28. Although the "stealth list" was due for publication in August or September 1990, it was concealed. "That is why it was called the stealth list because it was never published." [Tzavaras Dep. at 15-16 and 23].

29. The "stealth list" of Navy base closures was also known as the "SECNAV 46" list. [Tzavaras Dep. at 15 and 23].

30. The "stealth list" or SECNAV 46 list had the specific approval of both Navy Secretary Garrett and CNO Kelso. [Tzavaras Dep. at 20-21].

31. The "stealth list" or SECNAV 46 list recommended the closure of the Philadelphia Shipyard. [Loftus Dep. Ex. 1 at 5; Tzavaras Dep. at 19].

32. Despite the fact that the Navy knew by the beginning of September 1990 that new

base closure legislation would undoubtedly be enacted, it persisted in its plan for the closure of the Philadelphia Shipyard. Thus, by October 18, 1990, the Navy Working Group reporting to the Advisory Committee stated that "[t]he plan for closure of Philadelphia Naval Shipyard and the resultant redistribution of workload has been developed." [MacKinnon Dep. Ex. 2 at 1].

F. The November 5, 1990, Enactment of the Base Closure Act

33. On November 5, 1990, the President signed into law the Defense Realignment and Base Closure Act (the "Base Closure Act"). [Courter Dep. Ex. 14 at v].

34. The Base Closure Act:

(a) Expressly stated that its "purpose" was "to provide a *fair process* that will result in a timely closure and realignment of military installations" [10 U.S.C. §2901(b) (emphasis supplied)].

(b) Required that *all* meetings of the Commission "be open to the public," except where classified information was being discussed [10 U.S.C. §2902(e)(2)(A)];

(c) Mandated the development and application of "final criteria" for making the closure and realignment determinations [10 U.S.C. §2903(b)(2)(A) and (c)];

(d) Mandated the creation of a *six year* force-structure plan for the Armed Forces for making the closure and realignment determinations [10 U.S.C. §2903(a) and (c)];

(e) Required the Secretary of Defense to consider all military installations "*equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.*" [10 U.S.C. §2903(c)(3) (emphasis supplied)];

(f) Required the Secretary of Defense to transmit to the Commission "a summary of the selection process that resulted in the recommendation for [closure or realignment] of each installation, including a justification for each recommendation [10 U.S.C. §2903(c)(2)];

(g) Required the Secretary of Defense to transmit to the GAO and the Commission "all information used by the Department in making its recommendations to the Commission for closures and realignments," and required the GAO (i) to assist the Commission in its review and analysis of the recommendations made by the Secretary and (ii) to transmit to the Commission and to Congress "a report containing a detailed analysis of the Secretary's recommendations and selection process" 45 days *before* the Commission's report was to be transmitted to the President [10 U.S.C. §§2903(c)(4), 2903(d)(5)(A) and 2903(d)(5)(B)]; and

(h) Proscribed the Secretary of Defense from carrying out any closure or realignment recommendation before the earlier of (i) the enactment of a joint resolution by Congress disapproving the closure recommendations, or (ii) the expiration of a 45 day statutory period that commenced on the day that the President transmitted the recommended closure and realignment list to Congress [10 U.S.C. §2904 (b)].

35. In reaching its decision to close the Philadelphia Shipyard, the Navy and the Base Closure Commission violated the Base Closure Act in several material respects:

(a) The Navy did not consider all shipyards *equally* without regard to prior consideration of proposals to close, and prior recommendations to close, the Philadelphia Shipyard. [10 USC. §2903 (c)(3)];

(b) The Navy's determination to close the Philadelphia Shipyard was based on an *ultra vires* criterion *outside* the "final criteria" promulgated by the Defense Department pursuant to the Base Closure Act. [10 USC §2903 (b)(2)(A) and (c)];

(c) The Navy's determination to close the Philadelphia Shipyard was based on its allegedly perceived force structure needs *beyond* the six-year period mandated by the Base Closure Act. [10 USC §2903 (c)(3)];

(d) The GAO reported on May 15, 1991 that it was unable to perform its statutory functions with respect to the Navy's base closure process and decisions because the Navy (i) "stonewalled" the GAO's efforts to monitor the Navy's base closure process as it occurred, (ii) employed a "subjective" process devoid of supporting documentation and (iii) refused to institute an internal control plan with respect to its process and decisions in violation of a Defense Department directive. [10 USC §§2903 (d)(5)(A) and (B); Yellin Dep. Ex. 2];

(e) The Navy's process was not "fair" because (i) it was not equal but instead predetermined by prior proposals and recommendations, (ii) it was subjective, (iii) critical Navy documents were withheld from the Commission's public hearing and scrutiny process and (iv) Admiral Peter Hekman ("Hekman"), the Navy officer most knowledgeable in the operations of Naval shipyards, was discouraged by the Navy from providing critical Navy testimony during the Commission's public hearings. [10 USC §§2903 (c)(3) and (c)(4), §2903 (e)(2)(A)];

(f) All meetings of the Commission were not open to the public since the Commission directed its staff to hold private meetings with the Navy's Base Structure Committee in a private effort to cure the deficiencies publicly found by the GAO in the Navy's base closure process and decisions. [10 USC §2903 (e)(2)(A)];

(g) The Commission withheld critical Navy documents, obtained after the last public hearing on the Philadelphia Shipyard, from its own public hearing and scrutiny process. [10 USC §2903 (e)(2)(A)]; and

(h) The Navy concealed from the Commission all documents opposing closure of the Philadelphia Shipyard. Members of the plaintiff Congressional delegation inadvertently discovered several of these critical documents; however, the Commission held no hearings to publicly scrutinize these documents or to ascertain the existence of other concealed Navy documents. [10 USC §2903(c)(4)].

G. The Base Closure Act's Force Structure Plan

36. The Base Closure Act required the Secretary of Defense to submit to the Congress and the Commission a force structure plan *for the six fiscal years from 1992 through 1997.* [10 USC §2903(a)].

37. The Act required that the Defense Secretary's recommendations for closure or realignment be based on this force structure plan. [DoD April 1991 Report at 7].

38. In December 1990, the DoD issued its Force Structure Plan for the six fiscal years from 1992 through 1997. [DoD April 1991 Report at 15].

39. The Force Structure Plan was submitted to Congress on March 19, 1991, and to the Base Closure Commission on March 23, 1991. [Courter Dep. Ex. 14 at B-1].

40. The unclassified summary of the Force Structure Plan disclosed that the Navy would have 94 fewer battle force ships, *one less aircraft carrier* and two fewer carrier air wings by the end of FY 1995. [DoD April 1991 Report at 21; Courter Dep. Ex. 14 at B-5].

41. During the 1990s the current mix of 34 Poseidon and Trident submarines would also be reduced to a force of 18 Trident submarines. [DoD April 1991 Report at 20].

H. The Defense Department Final Criteria

42. As part of the objective process for determining whether to close a military installation, the Base Closure Act required the Secretary of Defense to establish selection criteria to be used in making a closure recommendation. [DoD April 1991 Report at 8].

43. In developing these criteria, the Secretary was required to publish proposed criteria in the *Federal Register* and solicit public comments. [DoD April 1991 Report at 8 and 23].

44. The Defense Department published eight proposed criteria and requested comments on November 30, 1990. [DoD April 1991 Report at 23].

45. The proposed criteria closely mirrored the criteria established for the 1988 Defense Secretary's Commission on Base Realignment and Closure. The only notable differences were that priority consideration was given to military value criteria and payback was no longer limited to six years. [DoD April 1991 Report at 23].

46. On February 15, 1991, the DoD published in the *Federal Register* eight proposed final criteria to govern the base closure and realignment process. [DoD April 1991 Report at 24].

47. The first four criteria concerned "military value" and were required to receive preference:

(1) Current and future mission requirements and the impact of operational readiness of the Department of Defense's total-force.

(2) The availability and condition of land, facilities and associated air space at both the existing and potential receiving locations.

(3) The ability to accommodate contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.

(4) The cost and manpower implications.

The fifth criterion concerned "return on investment":

(5) The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of closure or realignment, for the savings to exceed the costs.

The final three criteria involved non-military "impacts":

(6) The economic impact on local communities.

(7) The ability of both the existing and potential receiving communities' infrastructures to support forces, missions, and personnel.

(8) The environmental impact.

[DoD April 1991 Report at 24; Courter Dep. Ex. 14 at C-1].

48. The proposed criteria were subject to Congressional review between February 15, 1991 and March 15, 1991. The criteria became final on March 15, 1991. [DoD April 1991 Report at 24].

I. The Defense Department December 10, 1990, and February 13, 1991, Directives

49. On December 10, 1990, the Department of Defense issued a directive mandating the exclusive procedures which the Military Departments were to follow in making defense base closure and realignment recommendations. [Nemfakos Dep. Ex. 1].

50. In accordance with the Base Closure Act, the December 10, 1991 Defense Department directive required that:

(a) All base closure studies have as their basis the six-year force structure plan mandated by the Act;

(b) All base closure recommendations be based upon the final criteria promulgated pursuant to the Act; and

(c) All bases be considered for closure "on an equal footing, without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department of Defense." [Nemfakos Dep. Ex. 1 at 2]. The Navy violated each of these requirements.

51. The December 10, 1990 directive also required the Navy to keep:

(a) Descriptions of how base closure selections were made and how they satisfied the final criteria;

(b) Data, information and analyses considered in making base closure selections; and

(c) Documentation for each base closure recommendation. [Nemfakos Dep. Ex. 1 at 2]. On May 15, 1991, the GAO concluded that the Navy did not maintain any of the requisite information, thereby preventing the GAO from performing its statutory function. [Meyer Dep. at 105; Yellin Dep. Ex. 2 at 46].

52. On February 13, 1991, the Department of Defense issued a directive requiring each of the Military Departments to "develop and implement an internal control plan for [their] base structure reviews to ensure the accuracy of data collection and analyses." [Nemfakos Dep. Ex. 2 at 2]. As will be demonstrated below, the GAO concluded that the Navy did not develop or implement an internal control plan for its base structure reviews. [Yellin Dep. Ex. 2 at 48].

J. The Role of Congress Under the Base Closure Act

53. Congress was precluded from exercising their statutory right to participate in the base closure process because (a) the GAO was unable to monitor the Navy's base closure process and decisions, (b) the Commission held private meetings with the Navy Base Structure Committee in a private effort to cure the deficiencies publicly found by the GAO in the Navy's base closure process and decisions and (c) critical Navy documents and testimony were withheld from the Commission's public hearing and scrutiny process. [10 U.S.C. §2903].

K. The Evaluative and Oversight Role of the General Accounting Office Under the Base Closure Act

54. The Defense Secretary's April 1991 Base Closure and Realignment Report to the Commission described the GAO's essential statutory role under the base Closure Act as follows:

"Public Law 101-510 provided for the General Accounting Office (GAO) to *monitor* the activities, *while they occur*, of the Military Departments, the Defense Agencies and the Department of Defense in selecting bases for closure or realignment under the Act.

"The GAO is required to provide the Commission and the Congress with a detailed analysis of the Secretary of Defense's recommendations and selection process. The GAO report, due by May 15, 1991, is also intended to describe *how the DoD selection process was conducted and whether it met the requirements of the Act*. In addition, the GAO is required to assist the Commission, if requested, with its review and analysis of the Secretary's recommendations." [DoD April 1991 Report at 9 (emphasis supplied)].

55. The Navy deliberately prevented the GAO from monitoring its base closure process as it occurred. The GAO concluded that the Navy's base closure process was subjective and not adequately documented and the GAO further concluded that the Navy's base closure decision did not satisfy the requirements of the Base Closure Act. [Yellin Dep. Ex. 2 at 46-48].

L. The Three Star Advisory Committee's Proceedings After Enactment of the Base Closure Act on November 5, 1990: Approval of the SECDEF 17 and "Stealth List" Recommendations for Closure of the Philadelphia Shipyard

56. Under the new Base Closure Act, which was enacted on November 5, 1990, the Navy was required to start the base-closing process anew with a "clean slate." [10 U.S.C. §2903(c)(3)].

57. The new legislation required that the Philadelphia Shipyard, which was slated for closure on both the SECDEF 17 list and the "stealth list," be given a new start on an equal basis with all other shipyards [10 U.S.C. §2903(c)(3)].

58. However, internal Navy documents and Navy deposition testimony make it abundantly clear that, despite the enactment of the new law, Navy Secretary Garrett, the Three Star Admiral Advisory Committee, the Advisory Committee's Working Group and the staff of the Chief of Naval Operations all continued to persist in closure of the Philadelphia Shipyard based upon the recommendations of the SECDEF 17 list and the "stealth list" or SECNAV 46 list [*See, e.g.* MacKinnon Dep. Ex. 3, 5, 8, 14 and 15; MacKinnon Dep. 84-88, 125, 154-155; Tzavara Deposition at 42-43, 46 and 57].

59. After the Base Closure Act had been passed by Congress and only five days before the President signed it, Mary Mac- Kinnon ("MacKinnon"), the person on the Advisory Committee Working Group responsible for shipyards, informed her Navy officer superiors that she would "write justification why we passed up lower ranked shipyards to select Phila. for closure." [MacKinnon Dep. Ex. 5 at 1; MacKinnon Dep. at 84-86]. MacKinnon also stated that she would "[d]evelop implementation plan and timeline to close Phila. Naval Shipyard after completion of CV 64 SLEP." [MacKinnon Dep. Ex. 5 at 3; MacKinnon Dep. at 86-88].

60. On November 16, 1990, only eleven days after the Base Closure Act was enacted, the Advisory Committee Working Group reported that *"[t]he 'stealth list' will become the [Navy's] 1991 base closure list . . .* [O]ur plan is to keep Philadelphia Naval Shipyard on the 1991 list and close/realign *as planned."* [MacKinnon Dep. Ex. 8 at 2 (emphasis supplied); MacKinnon Dep. at 125].

61. At that time, the question was not *if* Philadelphia would close, but "*when* it would close." [MacKinnon Dep. at 124 (emphasis supplied)].

62. On November 5, 1990, the date when the Base Closure Act was enacted, the Working Group had ranked the Philadelphia Shipyard sixth, with a score of 274 points, ahead of the Portsmouth Shipyard, with 263 points, and the Mare Island Shipyard, with 215 points. [MacKinnon Dep. Ex. at 2; MacKinnon Dep. at 58]. In order to justify closing Philadelphia instead of Portsmouth and Mare Island, the Working Group relied on the "projected workload in fiscal year 1998 through 2000 requir[ing] six nuclear naval shipyards." [MacKinnon Dep. at 59; MacKinnon Dep. Ex. 3 at 3; MacKinnon Dep. Ex. 15 at 6].

63. The years 1998-2000 were outside the six-year force structure period governing base closures under the Base Closure Act. [10 USC §2903 (a) and (c)].

64. By November 16, 1990, the Working Group had already concluded that the new proposed base closure criteria under the Base Closure Act would not change the ranking of the shipyards, that is, Philadelphia would continue to be ranked sixth and Portsmouth and Mare Island would continue to be ranked seventh and eighth. [Mac- Kinnon Dep. at 112-113; MacKinnon Dep. Ex. 8 at 2].

65. On that same date, the Working Group also reaffirmed its proposed "actions" with respect to bases targeted for closure:

"Develop implementation plan and timeline to close Philadelphia Naval Shipyard after completion of CV 64 SLEP." [MacKinnon Dep. at 101; MacKinnon Dep. Ex. 7 at 3].

66. Totally disregarding the "equal footing" requirement of the Base Closure Act, as of November 20, 1990, the Three Star Admiral Advisory Committee nevertheless made recommendations to the Chief of Naval Operations with respect to base closures and realignments. [Tzavaras Dep. 34-35]

67. Ultimately the "stealth list" in its final form, including the Philadelphia Shipyard as a mothballed closure, became a list of recommended base closures made by the Three Star Admiral Advisory Committee to the Secretary of the Navy. [MacKinnon Dep. at 121-122; Loftus Dep. at 22, 29, 31, 36-39; Tzavaras Dep. at 35-36; Hekman Dep. at 18-19, 28, 135-136].

68. The Minutes of the Working Groups December 4, 1990 meeting note that a Three Star Admiral Advisory Committee meeting was scheduled for December 20, 1990 to review the Working Group's preliminary list of base closures and that "OP-44 [Admiral Drennon] will be the primary briefer and will compare the new recommendations to those known as the SECNAV "46" developed during deliberations prior to the new base closure legislation." [MacKinnon Dep. Ex. 11 at 3; Tzavaras Dep. at 40-41].

69. The Working Group's proposed closure list was completed by December 10, 1990. That list included the Philadelphia Shipyard [MacKinnon Dep. at 144].

70. At a December 10, 1990 Working Group meeting, Capt. Tzavaras noted that the Defense Department had issued its policy directive that day regarding base closure procedures, but that it "doesn't change anything." [MacKinnon Dep. Ex. 12 at 1]. In other words, even though the Defense Department had mandated in its December 10, 1990 directive that all bases be considered for closure "on an equal footing, without regard to whether the installation has been previously considered or proposed for closure or realignment", the Three Star Admiral Advisory Committee and its Working Group would continue with their "stealth list" and its recommended base closures, including the Philadelphia Shipyard. [Nemfakos Dep. Ex. 1 at 2].

71. Thus, the minutes of the Working Group's December 10, 1990 meeting note that the December 20, 1990 presentation to the Three Star Admiral Advisory Committee of the Working Group's recommended base closures would annotate which base closures were on the "stealth list" or SECNAV 46 list. [MacKinnon Dep. Ex. 13 at 4; Tzavaras Dep. at 42-43].

72. Despite repeated attempts by the Navy to rank the Philadelphia Shipyard lower than the other seven shipyards, under the new proposed base closure criteria, application of the criteria consistently ranked other shipyards below Philadelphia. [MacKinnon Dep. Ex. 15; Yellin Dep. Ex. 1].

73. On December 18, 1990, MacKinnon utilized the new base closure criteria proposed under the Base Closure Act to rank the eight Naval shipyards. Under the new criteria, Philadelphia ranked sixth, with 274 points, and Portsmouth and Mare Island ranked seventh and eighth, with 263 points and 215 points, respectively. [MacKinnon Dep. at 165-166; MacKinnon Dep. Ex. 15 at 1-6].

74. It was only by awarding each nuclear capable shipyard 50 so-called "bonus points"

under a bogus criterion *not* included in the new base closure criteria that Portsmouth jumped over Philadelphia. But, even after receiving its 50 so-called "bonus points," Mare Island was still ranked eighth behind Philadelphia. [MacKinnon Dep. at 167–172; MacKinnon Dep. ex. 15 at 7].

75. Moreover, the award of 50 "bonus points" was expressly based upon the "projected workload for the naval shipyards in 1998–2000," a force structure period clearly *beyond* the six year 1992–1997 requisite force structure period under the Base Closure Act. [MacKinnon Dep. at 191–192; MacKinnon Dep. Ex. 15 at 6].

76. On December 19, 1990, MacKinnon summarized the status of base closures on the eve of the Three Star Admiral Advisory Committee meeting:

"*All* industrial activities were reviewed in the last several months, and the decision was made to maintain all activities *with the exception of Philadelphia Naval Shipyard.*" [MacKinnon Dep. Ex. 16 (first emphasis in original and second emphasis supplied)].

77. Given MacKinnon's summary, it is not surprising that on December 19, 1990 Vice Admiral Hekman, a member of the Advisory Committee and the highest Navy officer supervising the operations of the eight Naval shipyards, wrote to Admiral Loftus, the immediate deputy of Chief of Naval Operations Kelso, stating:

"While I realize that the [Navy] Secretary [Garrett] has been briefed *and has concurred with the proposal to mothball Philadelphia Naval Shipyard,* I strongly recommend that *this decision* be reconsidered." [Hekman Dep. Ex. 2; Hekman Dep. at 17–21, 28 (emphasis supplied)]. Navy Secretary Garrett had previously approved the mothballing of the Philadelphia Shipyard when he approved the SECDEF 17 list in January 1990 and the "stealth list" or SECNAV 46 list in the summer of 1990. [Tzavaras Dep. at 53–54].

78. Hekman's December 19, 1990 "disserting" memorandum to Admiral Loftus was rejected on December 20, 1990 at the Advisory Committee meeting. As Admiral Loftus subsequently stated in his reply memorandum to Vice Admiral Hekman dated January 11, 1991, Vice Admiral Hekman's request for reconsideration "was discussed at the 20 December 1990 meeting of the [Three Star Admiral] Base Closure and Realignment Advisory Committee" and " was not accepted." [Claman Dep. Ex. 5; Loftus Dep. at 37–39; Claman Dep. at 83–86; Hekman Dep. Ex. 4; Tzavaras Dep. at 57].

79. Indeed, at the December 20, 1990 Advisory Committee meeting, the Working Group presented its list of recommended closures to the Advisory Committee. The Philadelphia Shipyard was on the list. [Loftus Dep. at 38–39; Tzavaras Dep. at 40, 44, 57].

80. Despite the fact the slate was supposed to be wiped clean by the Base Closure Act, the Working Group list that was presented to the Advisory Committee on December 20, 1990 clearly indicated that the shipyard had been previously recommended for closure. [Tzavaras Dep. at 43–46, 57; MacKinnon Dep. Ex. 14 at 1–2; Loftus Dep. at 39].

81. Thus, the viewgraphs displayed at that Three Star Admiral Advisory Committee meeting showed not only the Working Group base closure recommendations but also the original "stealth list" and SECDEF 17 list base closure recommendations. [Tzavaras Dep. at 46; MacKinnon Dep. at 154–155; MacKinnon Dep. Ex. 14 at 2].

82. On December 20, 1990, the Three Star Admiral Advisory Committee voted to close the Philadelphia Naval Shipyard. [Tzavaras Dep. at 57; Loftus Dep. at 39].

83. The Working Group did not "wipe the slate clean" by presenting to the Advisory Committee recommendations for base closure and realignments that were made prior to the passage of the 1990 Base Closure Act. As one Working Group member testified, however, "those kinds of decisions were way above my pay grade." [MacKinnon Dep. at 156].

84. Moreover, since the Advisory Committee decision was itself *not* premised on the new base closure criteria promulgated pursuant to the Base Closure Act, not finalized until March, 1991, and *not* the result of the Navy's base closure process undertaken as a result of the enactment of the Base Closure Act, the decision was yet a *third* recommendation to close the Philadelphia Shipyard reached outside the base closure process. [MacKinnon Dep. Ex. 14 at 1–2 and 8 at 2].

85. Indeed, it was not until late December 1990 that the Navy's Base Structure Committee was appointed and it was not until January 28, 1991 that Navy Assistant Secretary Jacqueline Schafer ("Schafer"), the Chair of the Navy's Base Structure Committee, issued her procedures memorandum governing the Navy's base closure process. [Schafer Dep. at 6–7, 9, 11, Meyer Dep. Ex. 1–A at Bates No. 1175; Nemfakos Dep. Ex. 3 at 1]. The first meeting of the Base Structure Committee was not until February, 1991, [Meyer Dep. Ex. at 1–A at Bates No. 1175].

86. The next meeting of the Three Star Advisory Committee was held on January 14, 1991. [Tzavaras Dep. at 59].

87. At that meeting, Vice Admiral Hekman again presented his recommendation to keep the Philadelphia Shipyard open. [Tzavaras Dep. Ex. 1; Hekman Dep. Ex. 5].

88. On January 14, 1991, the Advisory Committee reaffirmed its December 20, 1990 decision to close the Philadelphia Shipyard: "With CNO approval, Philadelphia Naval Shipyard will be proposed to the FY91 Base Closure and Realignment Commission (BCRC) for closure." [Tzavaras Dep. Ex. 1; Tzavaras Dep. at 59–60].

89. On January 28, 1991, the full list of the Three Star Admiral Advisory Committee base closure recommendations, including the recommendation to close the Philadelphia Shipyard, was presented to Chief of Naval Operations Kelso. [Loftus Dep. at 39–41].

90. Admiral Loftus, a member of both the Advisory Committee and the Navy's Base Structure Committee, was present during the CNO's briefing of the Advisory Committee's base closure list. [Loftus Dep. at 40].

91. Loftus fully concurred in the recommendation to close the Philadelphia Shipyard. [Loftus Dep. at 44].

92. In fact, internal Navy documents dated January 25, 1991 demonstrate that Admiral Loftus, who was also a member of the BSC, had by that date recommended that the Philadelphia Shipyard be closed and its drydocks mothballed. [Hekman Dep. Ex. 3; Hekman Dep. at 68–70; Hekman Dep. Ex. 13].

93. The Three Star Admiral Advisory Group went out of existence after it forwarded its report to CNO Kelso and the Secretary of the Navy. [Hekman Dep. at 34]

M. NAVSEA'S December 1990 Dissent From Closure of the Philadelphia Shipyard: "Too Late in Process"

94. The Naval Sea Systems Command ("NAVSEA") is the Naval command in charge of all Naval shipyards in the United States. [Hekman Dep. at 24].

95. The Commander of NAVSEA from September 1, 1988 to on or about April 14, 1991 was Vice Admiral Hekman. vice Admiral Hekman retired on May 1, 1991. [Hekman Dep. at 10].

96. Vice Admiral Hekman was the individual most knowledgeable about Naval shipyards in the United States during the period from 1990 through April 1991, [Hekman Dep. at 49].

97. Vice Admiral Hekman was a member of the Three Star Admiral Advisory Committee and was invited to participate in the meetings that discussed facilities, such as shipyards, within his command. [Hekman Dep. at 24–25].

98. On December 17 or 18, 1990, Vice Admiral Hekman was advised by the CNO's office that Admiral Loftus had presented the Advisory Committee's recommendation to close the Philadelphia Shipyard to the Secretary of the Navy and that the Secretary had "concurred" in the Advisory Committee's recommendation. [Hekman Dep. at 18–19].

99. Vice Admiral Hekman immediately telephoned Admiral Lang, a deputy of Admiral Loftus, about the decision of the Advisory Committee. He was advised that the Advisory Committee had made the recommendation to close the Philadelphia Shipyard to the Navy Secretary and that "the Secretary had basically concurred in what we're recommending." [Hekman Dep. at 28[.

100. On December 19, 1990, Vice Admiral Hekman wrote to the Chief of Naval Operations urging the Navy's reconsideration of its decision to close the Philadelphia Shipyard:

"While I realize that the [Navy] *Secretary [Garrett] has been briefed and has concurred with the proposal to mothball Philadelphia Naval Shipyard,* I strongly recommend that *this decision* be reconsidered." [Hekman Dep. Ex. 2 (emphasis supplied); Loftus Dep. at 38].

101. Despite the fact that the Navy's Base Structure Committee *had not even held its first meeting* as of late December 1990, Vice Admiral Hekman acknowledged that the actions being taken late in 1990 by the Navy were "close to the end of the process." [Hekman Dep. at 54].

102. In response to Vice Admiral Hekman's December 19, 1990 memorandum, Admiral Loftus advised him on January 11, 1991 that "NAVSEA's recommendation that Philadelphia Naval Shipyard not be mothballed and closed, but rather be downsized to approximately the size of a ship repair facility" was discussed at the December 20, 1990 meeting of the Advisory Committee and "was not accepted." [Hekman Dep. Ex. 4; Hekman Dep. at 29–30]. Rather, "*the approved* alternative" was to mothball the Philadelphia Shipyard. [Hekman Dep. Ex. 4 (emphasis supplied)].

103. Vice Admiral Hekman recommended to the Advisory committee and the Navy's BSC that downsizing of the Philadelphia shipyard not start until fiscal year 1995. [Hekman Dep. at 48].

104. Admiral Claman also presented information to justify not closing the Philadelphia Shipyard to the Navy's BSC. [Hekman Dep. at 73]. Admiral Claman concurred with Vice Admiral Hekman that the Philadelphia Shipyard should not be closed or reduced in size until fiscal year 1995. [Claman Dep. at 77].

105. Despite the fact that Vice Admiral Hekman was Commander of NAVSEA, after his initial presentation, he was not invited to attend any meetings with the BSC. [Hekman Dep. at 37–40, 69, 73].

106. Until the "bitter end," Vice Admiral Hekman continued to speak out against closure of the Philadelphia Shipyard because he "felt that I owed the Navy and the country loyalty." [Hekman Dep. at 101; Tzavaras Dep. at 80].

107. By memorandum dated March 15, 1991, Hekman again urged Admiral Loftus to reconsider the Advisory Committee's decision to close the Philadelphia Shipyard. Hekman stated that he continued "to take the position that retention of a credible repair capability at Philadelphia for naval ships homeported in the Northeast area is the most cost effective solution." [Hekman Dep. Ex. 7].

108. In support of his position, Hekman again advised the CNO that "the workload distribution for naval shipyards in the 90's supports *full operations* at Philadelphia through mid FY 95." Hekman stressed that closure of Philadelphia in 1993 would "cause significant perturbations to carrier overhauling yard assignments." [Hekman Dep. Ex. 7 (emphasis supplied)].

109. Hekman never received a response to his March 15, 1991 memorandum. [Hekman Dep. at 48].

110. Vice Admiral Hekman advised a Base Closure Commission staff member that he "was asked to retire early, in part, . . . because he persisted in disagreeing with the decision to close the Philadelphia Naval Shipyard." [Yellin Dep. Ex. 6 at 1].

N. The Creation of the BSC and the Lack of Internal Controls

111. On December 14, 1990, the Secretary of the Navy established a six-member Base Structure Committee, also known as the BSC, allegedly to conduct a base structure review and to determine the Navy's base closure candidates. [Counter Dep. Ex. 14 at 2–2; Nemfakos Dep. Ex. 3 at 1].

112. The BSC was charged with reviewing all installations inside the United States *equally*, "without regard to whether the installation has been previously considered or proposed for closure or realignment." [Nemfakos Dep. Ex. 1 at 2].

113. The members of the Base Structure Committee were Assistant Secretary Schafer, Admiral Loftus (CNO Kelso's deputy), Lt. Gen. Winglass (Marine Corps), Rear Admiral David Oliver (OP–08), Major General Gardner (Marine Corps) and Charles Nemfakos (Comptroller's office). [Schafer Dep. at 7, 13–15].

114. Capt. Tzavaras testified that it was his understanding that "Admiral Loftus was the CNO's principal BSC member and he would be able to provide the interface between the CNO and the BSC and insure that the CNO's concerns were addressed." [Tzavaras Dep. at 71–72].

115. The BSC was clearly a facade. By the time that the BSC held its first meeting, the closure decisions had already been made by the "Three Star Admirals" and concurred in by the Secretary of the Navy. [Tzavaras Dep. at 57; Loftus Dep. at 39; Hekman Dep. at 26–28; Hekman Dep. Ex. 2].

116. As a result of numerous public concerns raised about the final criteria's broad nature and the need for objective measures and documentation for the application of the criteria [DoD April 1991 Report at 25], on December 10, 1990, the Defense Department issued a directive setting forth "Policy Guidance" and "Record Keeping" requirements to the Military Departments, the Comptroller and the Assistant Secretaries of Defense as follows:

"*Policy Guidance* Base closure, realignment, or consolidation studies that could result in a recommendation for base closure or realignment . . . *must meet the following requirements:*

"The studies, including their recommendations, *must* have as their basis the Force Structure Plan required by Section 2903 of the Act;

"The recommendations in the studies *must* be based on the final base closure and realignment selection criteria established under that Section [2903 of the Act]; and

"The studies *must* consider *all* military installations inside the United States . . . *on an equal footing*, without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department of Defense.

* * * * *

"*Record Keeping* DoD components shall keep:

"Descriptions of how base closure and realignment selections were made, and how they met the final selection criteria;

"Data, information and analyses considered in making base closure and realignment selection; and

"Documentation for each recommendation to the Secretary of Defense to close or realign a military installation under the Act." [Nemfakos Dep. Ex. 1 at 2 (emphasis supplied)].

117. On February 13, 1991, the Defense Department issued a directive setting forth "Internal Controls" requirements to the Military Departments mandating development and implementation of an "internal control plan" which "at a minimum" was to include:

"Uniform guidance defining data requirements and sources for each category of base,

"Systems for verifying accuracy of data,

"Documentation justifying any changes made to data submissions, and

"Procedures to check the accuracy of the analysis made from the data provided." [Nemfakos Dep. Ex. 2 at 2].

118. The GAO was unable to review the process the Navy used to recommend bases for closure or realignment, because the Navy did not adequately document its decision-making process or the results of its deliberations. [Yellin Dep. Ex. 2 at 46; Meyer Dep. at 94].

119. Moreover, the GAO concluded that "the Navy did not establish an internal control plan to ensure the validity and accuracy of information used in its assessment as required by" the Defense Department. [Yellin Dep. Ex. 2 at 46; Meyer Dep. at 101].

O. The Three Star Admiral Advisory Committee Recommendation To Close the Philadelphia Shipyard was Presented to Both the Navy BSC and Navy Secretary Garrett

120. Both Assistant Secretary Schafer, the Chair of the Navy BSC, and Admiral Loftus, a member of the Navy BSC and the Advisory Committee as well as the deputy of Chief of Naval Operations Kelso, testified that the Three Star Admiral Advisory Committee's base closure recommendations (the "stealth list") were presented to the Navy Base Structure Committee during its deliberations. [Shafer Dep. at 40–41; Loftus Dep. at 42].

121. The position of Chief of Naval Operations Kelso on base closure was also presented to the Navy BSC during its deliberations. As Capt. Tzavaras, the head of the BSC's Working Group succinctly stated, there would be no "doubt that it was in the minds of the Base Structure Committee what CNO wanted to do" with respect to base closures. [Tzavaras Dep. at 65, 75; Tzavaras Dep. Ex. 2].

122. A May 29, 1991 *private* meeting between the Navy BSC and the staff of the Base Closure Commission, the Navy represented to the Commission staff that Chief of Naval Operations Kelso had directed the Navy BSC to remove the Long Beach Naval Shipyard from its list of base closure recommendations. [Armfield Dep. at 70; Armfield Dep. Ex. 5 at 2].

123. Significantly, on March 27, 1991, when Assistant Secretary Schafer made her base closure recommendations to Navy Secretary Garrett, Garrett "requested" the 1990 "stealth list". Garrett wanted to "review" the "stealth list" *before* making his base closure recommendations to Defense Secretary Cheney. [Schafer Dep. Ex. 1 at 1].

124. Thus, it is indisputable that both the Navy BSC and Navy Secretary Garrett considered the 1990 "stealth list" recommendation for closing the Philadelphia Shipyard in violation of the statutory requirement that all bases be considered "equally without regard to whether the installation has been previously considered or proposed for closure or realignment." [10 U.S.C. §2903(c)(3)].

P. The Navy BSC's Process in Arriving at its Base Closure Recommendations Was Totally Subjective and "a Black Hole"

125. At a May 20, 1991 private meeting between the Navy BSC and the staff of the Base Closure Commission, Nemfakos—a member of the Navy BSC—stated to the Commission staff that the Navy's base closure process had been "subjective." [Armfield Dep. at 16; Armfield Dep. Ex. 1 at 2; Nemfakos Dep. Ex. 8 at 2]

126. A document prepared by the Navy to respond to the GAO's criticisms of the Navy's undocumented base closure process admitted that the process was "ultimately subjective." [Nemfakos Dep. at 70; Nemfakos Dep. Ex. 3 at 7].

127. As the Navy characterized its own process in response to GAO criticisms:

"The assignment of grades to the base closure criteria was the result of a consensus reached by the members of the BSC. The opinions of individual BSC members were not recorded and minutes were not kept at BSC meetings." [Nemfakos Dep. at 70–71; Nemfakos Dep. Ex 3 at 1–2 (emphasis supplied)].

128. Because of the absence of any documentation supporting the Navy BSC's process and decisions, the GAO referred to the BSC executive sessions as the "Black Hole" and the Base Closure Commission staff referred to them as the "twenty-two minute gap." [Meyer Dep. at 83–84; Schafer Dep. Ex 2 at 1].

129. The Navy BSC's treatment of the Philadelphia Shipyard epitomized the subjective and arbitrary nature of the Navy BSC's base closure process and decisions. [Nemfakos Dep. Ex. 8 at 2; Armfield Dep. at 14–19, 70]

130. Based upon both the old and new base closure criteria, the Philadelphia Shipyard ranked sixth and Portsmouth and Mare Island ranked seventh and eighth, respectively. [MacKinnon Dep. at 49–53, 112–119, 165–166; MacKinnon Dep. Ex. 15 at 1–6; MacKinnon Dep. Ex. 16].

131. It was only by awarding all nuclear capable shipyards 50 "bonus points" because of an alleged need for them during the 1998–2000 period that Portsmouth jumped ahead of Philadelphia. Moreover, even with the 50 "bonus points," Mare Island remained eighth. [MacKinnon Dep. at 167–172, MacKinnon Dep. Ex. 15 at 6–7; MacKinnon Dep. Ex. 16].

132. The Navy BSC disregarded the numerical rankings of the shipyard during its deliberations. [Nemfakos Dep. at 43, 95; Nemfakos Dep. Ex. 7 at 7 at 3; MacKinnon Dep. Ex. 194–195].

133. Instead, the Navy BSC opted for color coded rankings utilizing green as the high-

est, yellow as the middle and red as the lowest ranking. [MacKinnon Dep. at 195].

134. However, the Navy's "BSC Rating Worksheet" for Shipyards conclusively demonstrates that, under the BSC's own color coded rankings, the Philadelphia Shipyard was equal to Charleston, Portsmouth and Mare Island and better than Long Beach. [Yellin Dep. at 25–27; Loftus Dep. at 46–47; Yellin Dep. Ex. 1].

135. Thus, based upon the application of the four military criteria, Philadelphia, Charleston, Portsmouth and Mare Island each received two greens and two yellows; whereas Long Beach received only one green and three yellows. Moreover, based upon the application of the three non-military criteria, Philadelphia received one yellow and two reds, whereas Long Beach received three reds. [Yellin Dep. at 32; Yellin Dep. Ex. 1]

136. Furthermore, Philadelphia, Charleston, Portsmouth and Long Beach were each given overall ratings of yellow. Even though both Mare Island and Philadelphia had two yellows and two greens for the four military criteria, Mare Island was given an overall rating of green. [Yellin Dep. at 25–27; Yellin Dep. Ex. 1].

137. Despite these ratings, the Navy BSC voted to close only Philadelphia based solely upon it subjective, undocumented and unscrutinized private deliberations, including their statement that "not all yellow are equal" "not all greens are equal." [Meyer Dep. at 90; Yellin Dep. Ex. 2 at 48; Meyer Dep. Ex. 3 at 3 and 5].

138. In fact, even though the Navy has steadfastly maintained that it needs two large carrier drydocks dedicated to Navy use on both coasts, the Navy BSC voted to close Philadelphia, thereby reducing the East Coast dedicated drydocks from three to one since Philadelphia has two of the three dedicated large carrier drydocks on the East Coast. [Yellin Dep. at 184–211; Loftus Dep. at 60, 68; Hekman Dep. at 57, 59–61].

Q. The BSC's Creation of an Unlawful "Ninth Criteria" To Justify Closure of Philadelphia: The "Step 5" Procedure

139. Under the "BSC Rating Worksheet" for Shipyards, the color coded ratings for the four priority military criteria conclusively demonstrated that Philadelphia's color coded rating was equal to Portsmouth, Charleston and Mare Island and better than Long Beach. [Yellin Dep. at 25–27; Loftus Dep. at 46–47; Yellin Dep. Ex. 1].

140. However, based upon a so-called "Step 5" procedure, which was not part of any of the four military criteria, the Navy BSC excluded not only the three nuclear capable shipyards—Portsmouth, Charleston and Mare Island—but also one non-nuclear shipyard—Long Beach—from any further base closure consideration. [Armfield Dep. at 55; Yellin Dep. at 178–179; Yellin Dep. Ex. 1; Loftus Dep. at 47, 59–60, 78–79].

141. By using a "Step 5" procedure, which was *outside* the four military criteria, the Navy BSC rigged the unlawful predetermined outcome against Philadelphia. [10 USC § 2903(b)(2)(A) and (c)].

142. The value to the Navy of having available a nuclear capable shipyard was clearly encompassed by the military criteria: mission suitability and availability of facilities. [MacKinnon Dep. at 277, 294; Courter Dep. at 230–231].

143. Nevertheless, the BSC arbitrarily and without authority created a separate, independent criterion that excluded all nuclear shipyards as well as Long Beach, a *non-nuclear* shipyard, from base closure consideration under its "Step 5" procedure. [Armfield Dep. at 55; Yellin Dep. Ex. 1; Loftus Dep. at 47, 59–60, 78–79].

144. The Navy BSC claimed that the projected nuclear workload precluded a nuclear shipyard from being closed. [Loftus Dep. at 53, 76].

145. However, internal Navy documents established that there was no capacity problem for nuclear shipyards until 1998, 1999 and 2000—a time period which could not be considered under the Base Closure Act's six year Force Structure Plan. [MacKinnon Dep. at 58; MacKinnon Dep. Ex. 3].

146. During the relevant six year period, all nuclear drydocks had excess capacity. [Nemfakos Dep. Ex. 10; Loftus Dep. at 59–60].

147. During the relevant six year period, the projected workload that the BSC considered at the nuclear shipyards included between 25% and 50% of work on non-nuclear ships. [Loftus Dep. at 56; Nemfakos Dep. at 81–82].

148. Even though between 25% and 50% of the work done in a nuclear shipyard is on non-nuclear ships, the Navy BSC maintained that it could not close any nuclear shipyards. [Nemfakos Dep. at 82].

149. The Navy BSC concluded that, in any event, it was not practical to close a nuclear shipyard since it would have to be re-opened in 1998. [Loftus Dep. at 54; Claman Dep. at 58–59; April 1991 Navy Detailed Analysis, Tab C at 4].

150. However, the BSC never considered or analyzed the cost of closing a nuclear shipyard, the cost of re-opening a nuclear shipyard or the cost of mothballing a nuclear shipyard. [Claman Dep. at 58–59].

151. In fact, NAVSEA has never even generated or reviewed any document within the Navy that attempted to quantify such costs. [Claman Dep. at 58–59].

152. Nevertheless, it is well known within the Navy that the closure of a nuclear shipyard will have a "*high unknown cost* for the Navy to correct existing environmental liabilities" before the nuclear facilities can be converted to any other post-closure use. [Claman Dep. at 58–59].

153. The cost of closing a nuclear shipyard is high because of the nuclear aspect, i.e. nuclear waste, nuclear reactors, etc. [Claman Dep. at 58–59].

154. The fact that the Navy does not want the closure of a nuclear shipyard subject to Congressional or public scrutiny is not a valid exemption under the Base Closure Act or the final criteria promulgated thereunder. [10 USC § 2901 *et seq.*].

155. The Navy considered the availability of private shipyards with respect to non-nuclear work when it voted to close the Philadelphia Shipyard. [Loftus Dep. at 66–67]. However, it conducted no analysis with respect to the availability of private nuclear shipyards to perform any of the nuclear work projected in 1998, 1999 and 2000. [MacKinnon Dep. at 66–67; Claman Dep. at 39].

156. The Navy was well aware that private nuclear shipyards on the East coast—Newport News and Electric Boat—could perform the projected work on nuclear ships. [MacKinnon Dep. at 66; Claman Dep. at 39]. Its failure to consider these shipyards in performing its analysis violated the statutory mandate that all bases be considered equally. [10 USC § 2903(c)(3)].

157. Prior to the enactment of the Base Closure Act (and the public scrutiny thereunder), the Navy was examining the possibility of closing Portsmouth. The Navy stated at the beginning of 1990 that refuelings in fiscal year 93 and the out years could be accomplished at another Naval shipyard. [MacKinnon MacKinnon Dep. Ex. 24; MacKinnon Dep. at 260].

158. Because of the "Step 5" procedure, the BSC did not consider whether Portsmouth could be closed and the nuclear work at Portsmouth moved to Charleston and Norfolk. Nor did the BSC consider whether the non-nuclear work at Portsmouth could be moved to Philadelphia. [MacKinnon Dep. at 228–230; Loftus Dep. at 58–59].

159. Retaining a non-nuclear shipyard to perform non-nuclear work is a cost-effective solution for the Government. [Hekman Dep. at 78–80; Clark Dep. at 8–9]. Closure of a nuclear shipyard that has significantly higher man-day rates and overhead should have been considered. [10 USC § 2903(a)].

160. The Navy BSC's illegal "Step 5" procedure initially left only Long Beach and Philadelphia as base closure candidates, since they were the only two non-nuclear shipyards. [MacKinnon Dep. at 270–271; Yellin Dep. at 178–179; April 1991 Navy Detailed Analysis, Tab C at 8].

161. The Long Beach Shipyard was on the SECDEF 17 list for closure and the BSC originally intended to include Long Beach in its recommendations for closure. [Nemfakos Dep. Ex. 8 at Bates No. 591, Armfield Dep. Ex. 5 at 2].

162. Internal Navy notes of a February 14, 1991 BSC meeting disclosed that it was "very obvious" that BSC member Nemfakos "really" wanted to close Long Beach. [Loftus Dep. at 79–80; Nemfakos Dep. Ex. 6 at 1; MacKinnon Dep. at 270–271].

163. In fact, Nemfakos was emphatic about closing Long Beach in lieu of *any* nuclear shipyard. [MacKinnon Dep. at 271].

164. The Navy "BSC Rating Worksheet" for Shipyards conclusively demonstrates that Philadelphia had a higher rating than Long Beach, since (a) under the four military criteria, Philadelphia had two greens and two yellows and Long Beach had only one green and three yellows and (b) under the three non-military criteria, Philadelphia had one yellow and two reds and Long Beach had three reds. [Yellin Dep. Ex. 1; Yellin Dep. at 25–27; Loftus Dep. at 46–47].

165. The COBRA model as of March 25, 1991 demonstrated that it was cheaper to close Long Beach than Philadelphia. [MacKinnon Dep. at 297; MacKinnon Dep. Ex. 27].

166. Pursuant to the BSC's own procedures, therefore, Long Beach was a more appropriate closure candidate than Philadelphia. [Meyer Dep. Ex. 1–B at 2].

167. Prior to its final recommendations to the Secretary of the Navy, the Navy BSC was advised by Chief of Naval Operations Kelso that Long Beach should be removed from the BSC closure list:

"BSC wanted to close Long Beach Naval Shipyard as well until the Chief of Naval Operations said he needed that yard." [Nemfakos Dep. Ex. 8 at Bates No. 591; see also Armfield Dep. Ex. 5 at 2].

168. To improperly circumvent the fact that Long Beach had the worst rating of all eight Naval shipyards, the BSC simply excluded Long Beach from further consideration because it had one of only two large carrier capable drydocks on the West Coast. Loftus testified that the only basis for the exclusion of Long Beach from consideration for closure was the need for emergent drydock capacity of the West coast. [Loftus Dep. at 72]. He further testified:

"[T]he fact that Long Beach had a carrier size drydock that could be used for emergent work precluded us [from] closing Long Beach." [Loftus Dep. at 76].

169. Long Beach therefore became part of the BSC's illegal "Step 5" procedure and the "BSC Rating Sheet" for Shipyards was revised to reflect that the three red ratings previously assigned to Long Beach by the BSC were crossed out and Long Beach was marked eliminated from consideration by "Step 5." [Yellin Dep. Ex. 1; Armfield Dep. at 55].

170. This requirement of two carrier capable drydocks on each coast is set forth in a long standing CNO policy known as OPNAVINST 3050.22. [Claman Dep. Ex. 1 at 10; Claman Dep. at 88; Hekman Dep. at 57; Hekman Dep. Ex. 10 at 3; April 1991 Navy Detailed Analysis, Tab C at 1].

171. This Instruction requires two shipyards on each coast that are capable of repairing aircraft carriers. The purpose for this instruction is to "have a responsive, geographically dispersed, *strike-free* industrial capacity; have a qualified available workforce whose priorities are *controlled by the Navy;* ensure support of highly *complex* and *classified* work; maintain the *immediate* capability to repair battle damage on *all* ship classes; provide an *immediate* industrial mobilization base." [Nemfakos Dep. Ex. 9 (emphasis supplied); April 1991 Navy Detailed Analysis, Tab C at 1].

172. OPNAVINST 3050.22 was in effect during the Base Closure process. [Hekman Dep. at 57].

173. The closure of Philadelphia violates this longstanding Navy strategic and operational requirement that two Naval shipyards be maintained on each coast that are capable of dock repairing aircraft carriers. [Nemfakos Dep. Ex. 9 at 3; Claman Dep. Ex. 6 at 10; Claman Dep. at 88; Hekman Dep. at 57].

174. The Navy BSC took the position that, although Philadelphia had two large carrier capable drydocks (one *more* than Long Beach), after Philadelphia was closed there would still be two large carrier capable drydocks available on the East Coast—one at the Norfolk Naval Shipyard and one at the Newport News *private* Shipyard. [Loftus Dep. at 61–62].

175. However, unlike the dedicated Naval shipyards where the Navy schedules the work, and can make a drydock available for emergent work, the Navy admittedly has no such control over private shipyards. [Loftus Dep. at 67–68; Yellin Dep. at 207–208].

176. The Navy BSC claimed that, by mothballing the two Philadelphia drydocks, it would preserve the Navy's ability for emergent aircraft carrier repairs in the event that the private shipyard at Newport News was not available. [April 1991 Navy Detailed Analysis, Tab C at 12].

177. However, Vice Admiral Hekman testified that closing a shipyard is "*an irreversible decision.*" He used as examples Hunter's Point and Brooklyn to support his position that, if the Navy mothballs the Philadelphia Shipyard, it will not be able to preserve the drydocks for emergent use and would sacrifice a capital investment facility that the Navy would never be able to restore. [Hekman Dep. at 58–59].

178. Moreover, since Long Beach ranked lower than Philadelphia and was only being retained for "emergent" large aircraft carrier drydock work, *i.e.* the same theory applicable to Philadelphia, the mothballing of Philadelphia's drydocks was a flagrant violation of the Base Closure Act. [Loftus Dep. at 72, 76]. The BSC did not treat the Philadelphia Shipyard equally in applying OPNAVINST 3050.22 to the non-nuclear Naval shipyards. [10 U.S.C. § 2903(c)(3)].

179. The Navy's predetermination to close the Philadelphia Shipyard is confirmed by its disparate treatment of the Philadelphia Shipyard during the base closure process.

180. Navy guidelines expressly prohibited non-emergency capital upgrades of any military installations on the 1990 Base Closure List during the 1991 base closure process. [Verified Amended Complaint, ¶¶102–105]. On February 4, 1991, Admiral Claman requested $2,578,000 additional funding for certain items for the Philadelphia Shipyard and $2,425,000 additional funding for the Long Beach Shipyard, including $1,050,000 to upgrade Long Beach to enable that shipyard to obtain nuclear certification. [Claman Dep. Ex. 7; Claman Dep. at 90–92; Verified Amended Complaint ¶¶102–105].

181. In violation of its own guidelines, Admiral Lang endorsed all of Long Beach's shipyards requested additional funding but did not endorse 80% of Philadelphia's request. [Claman Dep. at 90–92].

R. The Navy BSC's "Stonewalling": The GAO's inability To Perform its Statutory Duty of Monitoring the Navy's Process as It Occurred

182. The dual role of the GAO under the Base Closure Act was: (1) to review each Service's base closure process as it occurred and to report to the Congress and the Commission by May 15, 1991 on each process, and (2) to provide assistance to the Commission if requested. [Meyer Dep. at 11–12].

183. Although "required by the Base Closure Act to monitor the Navy's base evaluation process *as it occurred,*" the Navy prevented the GAO from performing this statutory role. [Meyer Dep. at 59].

184. The Army and the Air Force fully cooperated with the GAO and provided them with timely access to documents during January, February and March 1991. [Meyer Dep. at 19, 24 and 25]. By reviewing their base closure processes as they occurred, the GAO was able to validate the logic that went into the Air Force and Army's decisional process. [Meyer Dep. at 26–27].

185. Unlike the Army and the Air Force, during its base closure process, the Navy refused to provide the GAO with any meaningful documentation. [Meyer Dep. at 58].

186. On March 11, 1991, a Pentagon memorandum advised Colin McMillan, Assistant Secretary of Defense (Production and Logistics), that:

"[The] GAO is upset with Navy *not sharing* base closure data. Donna Heivilin has called Dana Berteau seeking his help. Apparently, [Airforce] and [Army] *are sharing.*"

* * * * *

"You need to convince Jackie [Schafer] to cooperate with GAO; believe the law requires it." [Nemfakos Dep. Ex. 4 (emphasis in original)].

187. On that same date, the GAO wrote a letter to BSC Chair Schafer:

". . . To effectively monitor the process, my staff needs timely access to specific types of data developed throughout the process. *We have been denied access to such data since first requested on February 11, 1991. . . .*

"The GAO is required by the [Base Closure Act] to monitor the process *as it occurs,* and report its findings to the Base Closure Commission and the Congress by May 15, 1991.

* * * * *

"The position the Navy Department has taken to this point makes it difficult if not impossible to meet our responsibilities in validating the process. The following data is the minimum we believe we need immediately to be able to perform our legislative mandate:

"(1) Functional categories and the Navy activities placed in each category;

"(2) The major factors and evaluation components to be used in evaluating activities and the definitions of each;

"(3) The capacity analysis, i.e., the data used to determine requirements and the data used to determine existing capacity within the functional categories; and

"(4) The data collected on each base, in each functional category where excess capacity was identified." [Nemfakos Dep. Ex. 5 (emphasis supplied)].

188. Capt. Tzavaras, the head of the BSC Working Group, "expressed frustration about his inability to provide [the GAO] with meaningful data in a timely manner, but reiterated that it [was] out of his hands." [Meyer Dep. Ex. 2 at 1].

189. MacKinnon, the member of the BSC Working Group with responsibility for shipyards, confirmed that, as of March 26, 1991, she had been advised that the GAO's requests for information would be deferred until the BSC made its final recommendations. [MacKinnon Dep. Ex. 23 at 2; MacKinnon Dep. at 257].

190. To partially appease the GAO's request for documents, on March 26, 1991, Capt. Tzavaras provided the GAO with two boxes of "unindexed, unorganized, miscellaneous documents" which consisted primarily of data which was not responsive to the GAO's request. [Meyer Dep. Ex. 2 at 2]. When asked who had made the decision to provide the GAO with the two boxes, Tzavaras "was either unaware or could not say." [Meyer Dep. Ex. 2 at 1]. The GAO later discovered that the boxes were essentially a "dump" of working Group files. [Meyer Dep. at 75; Meyer Dep. Ex. 2 at 3].

191. The GAO concluded that the "bottom line" was that the March 26 data did not "enable GAO to meet its responsibilities as spelled out in the 1990 Base Closure Act." [Meyer Dep. at 76–77; Meyer Dep. Ex. 2 at 3]. Rather, the backup information offered was "poorly organized" and related to a 1990 VCNO study without any explanation of its significance to the instant base closure process. As such, the data was of no use since it would be "like studying the Vietnam War to learn about the Persian Gulf." [Nemfakos Dep. Ex. 3 at 2].

S. The GAO's Inability To Transmit by May 15, 1991, a Report to the Base Closure Commission and Congress That Evaluated the Navy's Process and Recommendations

192. The Army and the Air Force documented their use of the force-structure plan and the military value criteria. The GAO was therefore able to conclude that their base closure recommendations were "adequately supported." [Yellin Dep. Ex. 2 at 3].

193. In stark contrast, the GAO concluded that the Navy's recommendations and processes were not susceptible to GAO evaluation. [Yellin Dep. Ex. 2 at 5, 46–48].

194. After denying the GAO access to its base closure review process for almost three months, the Navy still failed to offer *sufficient* documentation to demonstrate that its process followed the force structure and military selection criteria. [Meyer Dep. at 96, 105]. The GAO was therefore prevented from evaluating the Navy's specific recommendations for closure:

"We were unable to conduct an extensive review of the process the Navy used to recommend bases for closure or realignment, because the Navy did not adequately document its decision-making process or the results of its deliberations. In addition, the Navy did not establish an internal control

plan to ensure the validity and accuracy of information used in its assessment as required by OSD.

Due to the limited documentation of its process, we also could not assess the reasonableness of the Navy's recommendations for closures." [Meyer Dep. at 105; Yellin Dep. Ex. 2 at 46 (emphasis supplied)].

195. The GAO had advised the BSC of its frustration with the Navy's *secretive* process and their lack of supporting documentation. As reported to BSC Chair Schafer by her principal deputy Ben Rose:

"Doug [Hanson] said the GAO staffers are referring to the BSC executive sessions as the 'Black Hole' and that the Commission staff is referring to them as the 'twenty-two minute gap.'" [Schafer Dep. Ex. 2 at 1; Meyer Dep. at 35 and 57].

196. The GAO requested a meeting with the BSC on May 7, 1991 to give the Navy one last chance to satisfy the GAO's documentation requirements before the GAO's report was issued. Robert Lawrence Meyer ("Meyer"), Assistant Director of Logistics for the GAO and the GAO person responsible for monitoring each Service's base closure process, testified that the GAO's objective was specifically stated to the Navy. [Meyer Dep. at 41].

197. At the May 7, 1991 meeting, the GAO provided the Navy BSC with an example of how the Air Force had documented its base closure process. The BSC responded that "They had nothing vaguely in any way resembling that, that they had not documented anything to that extent." [Meyer Dep. at 89–90].

198. At the May 7, 1991 meeting, the Navy BSC informed the GAO that it had not kept any minutes or records of the BSC meetings resulting in base closure decisions and had not documented the Navy's base closure process. [Meyer Dep. at 36].

199. The Defense Department had required each of the Armed Services to establish an internal control plan to ensure the validity and accuracy of information used in their base closure assessments. [Meyer Dep. at 103].

200. Meyer testified that the Air Force had put an auditor in place to assure that its data was correct and the GAO was independently able to validate the data. Similarly, the Army audit agency independently validated the Army's data and the Army established an ongoing plan to assure that the data provided to the decision makers was accurate. [Meyer Dep. at 104].

201. The Navy failed to establish an internal control plan as required by the Defense Department. The Navy audit agency was never involved in the Navy's base closure process. [Meyer Dep. at 39 and 103–105]. The GAO therefore had no way of concluding whether any of the Navy's recommendations for base closure were "right" or "wrong", "correct" or "incorrect", or "reasonable" or "unreasonable." [Meyer Dep. at 105].

202. At the May 7 meeting, the GAO advised the BSC that "if there was one," its internal control plan was "inadequate." [Meyer Dep. at 39].

203. In addition to the lack of adequate documentation and the absence of any internal control plan, the GAO determined that it could not evaluate the Navy's "methodology" for reviewing air stations, shipyards or labs. [Yellin Dep. Ex. 2 at 46–48].

204. At no time prior to May 15, 1991, did the GAO receive any documentation from the BSC to explain how it gave overall ratings to bases which had identical ratings on each of the first four military criteria. [Meyer Dep. at 96].

205. In response to GAO questions regarding the rationale for assigning different overall ratings to bases that were given identical ratings on each of the first four military criteria, the BSC inscrutably stated that "not all yellows are equal" and "not all greens are equal." Again, since the BSC's rationale for these decisions was not documented, the GAO could not determine the reasonableness or correctness of the BSC's final decisions. [Meyer Dep. at 95–96].

206. The GAO could not validate whether the Navy's overall ranking of the shipyards corresponded to the evaluations given in the underlying criteria. [Meyer Dep. at 67].

207. There was no way for the GAO to determine what data the BSC had used in making its base closure decisions. [Meyer Dep. at 102].

208. The GAO also identified three additional deficiencies in the Navy's process for determining base closures: (1) insufficient justification to support "the basis for the [BSC's] military value ratings for Navy installations"; (2) the implementation and use of an inconsistent color coding system to rate military bases; and (3) the Navy's failure to assign responsibility for developing and implementing an internal control plan to ensure the accuracy of information used by the Navy in its base structure reviews. [Yellin Dep. Ex. 2 at 48].

209. One of the inconsistencies within the BSC's rating process specifically identified by the GAO included the fact that the BSC had given identical ratings to two naval bases (Mare Island and Philadelphia) on each of the first four military selection criteria, but—without any discernible justification—had arbitrarily assigned an overall rating of green to one (Mare Island) and yellow to the other (Philadelphia). [Yellin Dep. Ex. 2 at 48].

210. Similarly, the BSC had assigned identical ratings to four Naval shipyards, but did not treat such bases equally. Again, the Philadelphia Shipyard was not excluded from the closure process although three other Naval shipyards which received the same rating as Philadelphia were excluded from further review. [Yellin Dep. Ex. 1].

211. Since the BSC "did not document these differences," the GAO "could not determine the rationale for its final decisions" and "could not comment on the [BSC's] closure and realignment recommendations based on the process." [Yellin Dep. Ex. 2 at 48].

212. The GAO also discovered inconsistencies in the Navy's service costs, savings estimates, payback calculations and recovery of closure costs. The GAO report concluded that the result of these inconsistencies was an overstatement of estimated annual savings and a shortening of the payback period for several closures. [Yellin Dep. Ex. 2 at 58].

213. Furthermore, despite Defense Department guidance to the contrary, the Navy used budget data which did not use 1991 dollars as its baseline. [Yellin Dep. Ex. 2 at 55–56].

214. To support its recommendations, the BSC stated that it relied on informal briefings and meetings, most of which were in closed executive sessions. When asked for minutes of these meetings, the BSC stated that:

"Time constraints and the volume of these meetings did not permit them to write detailed minutes of these meetings or to document every decision." [Meyer Dep. Ex. 3 at 3; Meyer Dep. at 91]. In fact, the Navy BSC did not write *any* minutes of its meetings or contemporaneously document *any* of its decisions. [Meyer Dep. at 92]. Instead, the Navy BSC preferred to operate in a shroud of secrecy far from the analytical eye of the GAO.

215. Nor was there any satisfactory reason as far as the GAO was concerned why the BSC could not have kept some record or minutes of its meetings. [Meyer Dep. at 92].

216. Given the BSC's secretive process, the GAO had no way of validating what the Navy claimed occurred at those meetings or the basis for the BSC's decision at those meetings. [Meyer Dep. at 94–95].

217. The GAO's independent Report, entitled *Observations on the Analyses Supporting Proposed Closures and Realignments*, was issued on May 16, 1991, in accordance with the statutory mandate of the Base Closure Act. [Yellin Dep. Ex. 2].

218. The GAO Report concluded that the Navy and its BSC:

(a) Had not treated all bases equally, as required by the Base Closure Act;

(b) Had not complied with the Defense Department's "record keeping" and "internal controls" requirements; and

(c) Had prevented the GAO from performing its statutory mandate of (i) reviewing and analyzing the Navy selection process and the recommendations for Naval base closures made by the Secretary of Defense and (ii) transmitting to Congress and the Commission a report containing a detailed analysis of the Navy selection process and the Secretary of Defense's recommendations for Naval base closures. [Yellin Dep. Ex. 2 at 46–48].

219. Not surprisingly, given their prior "stonewalling" of the GAO, the Chair of the BSC was completely indifferent to the GAO's conclusions. Schafer testified that she did not recall whether or not she read the GAO report, but if she did it was not in any detail:

"If I looked at it, it came through, if it showed up on my desk then I may have picked it up and flipped through it but I did not read this document in detail." [Schafer Dep. at 71 and 73].

220. It was only *after* the Commission expressed concern about the GAO's findings on May 20, 1991 that the BSC *privately* provided the Commission's staff with additional documentation. [Nemfakos Dep. Ex. 7 and Yellin Dep. Ex. 7]. However, the GAO was never given an opportunity to comment on or evaluate the BSC's additional documentation. Nor did the Base Closure Commission ever request the GAO to assess or evaluate the base closure recommendations made by the Navy in light of the additional information. [Meyer Dep. at 106 and 109].

221. Significantly, the Navy *never* provided the GAO with *any* of the following documentation or information:

(a) Detailed information on the bases that were not selected for closure, thereby preventing the GAO from validating the Navy's selection process of base closure candidates [Meyer Dep. at 61–62];

(b) Although Capt. Tzavaras advised the GAO that he was preparing documentation to be shown at meetings between the BSC and certain Navy senior officials, the GAO was never provided with such documentation [Meyer Dep. at 81–82];

(c) The fact that the Navy had a "stealth list" of base closures which had been prepared in 1990 and approved by the Secretary of the Navy in 1990 [Meyer Dep. at 78–79]; and

(d) The fact that the Secretary of the Navy had concurred with the proposal to mothball the Philadelphia Naval Shipyard in 1990 [Meyer Dep. at 79–80].

222. None of the information submitted by the Navy to the Base Closure Commission as

a result of the private meetings between the BSC and the Commission staff from May 20, 1991 to May 29, 1991 was ever made part of the Commission's public hearing process. [Courter Dep. at 29–31 and 39–41].

T. The Base Closure Commission Staff Also Concluded That the Navy BSC Could Not Justify or Rationally Explain Its Base Closure Process and Decisions

223. The Base Closure Commission staff conducted a compliance review of the Navy BSC closure process and decisions. [Yellin Dep. at 54–55; Yellin Dep. Ex. 3].

224. Based upon its compliance review, on May 13, 1991 the Commission staff prepared a report which, *inter alia*, contained the following "conclusions":

"(1) *The BSC did not explain the criteria* used to determine which functional categories to examine for potential subcategory excess capacity.

"(2) *Documentation is provided for only some of the data used by the BSC. There is also no record of BSC resolution of conflicting data or institution of a means of verifying data.*

"(3) Military value (criteria 1–4) evaluation is *totally subjective*. The only documentation of the BSC rating for any of the criteria is a single color grade (green, yellow, red). No information is provided about the evaluation of any factors which contribute in part to the color grade. Conflict with grading for similar criteria in the VCNO Working Group input to the BSC are not explained.

"(4) *Validation* of base exclusions based upon the BSC's overall military value grade of green *is very difficult due to the undocumented and subjective nature of the overall grade*. Exclusion of bases with yellow overall grades are not consistently documented.

(5) The identification of a target number of base closures based upon the capacity analysis of a functional category is part of the Navy's process description that is *not consistently applied*. In most categories *a limited explanation of the reason for a base's selection is provided. No explanation is provided for its choice over another base*. In the same category or subcategory even though other bases may have the same overall military value grade. For most categories no data is provided about remaining excess capacity or an explanation of the reasons for retaining a specific amount of the excess." [Yellin Dep. Ex. 3 at 3 (emphasis in original)].

225. As a result of its conclusions, the Commission staff, *inter alia*, "recommended":

"(1) *The Navy has not provided sufficient documentation of its process and its implementation to allow the Commission to determine if the Navy methodology is in general compliance with the law and the eight DoD criteria.*" [Yellin Dep. Ex. 3 at 4 (emphasis in original)].

226. Thus, like the GAO, the Commission staff found the Navy's base selection process and decisions fatally flawed. [Yellin Dep. Ex. 3].

U. The 1991 Defense Base Closure Commission

227. The Base Closure Act provides for an eight member Commission to conduct an independent, lawful and fair process by considering all military installations "equally without regard to whether the installation has been previously considered or provided for closure or realignment by the Department [10 U.S.C. §2903(c)(3); Courter Dep. Ex. at V].

228. The President nominated, and the Senate confirmed, former New Jersey Congressman James A. Courter as Chairman of the Commission and the following seven as members: William L. Ball, III, former Secretary of the Navy; Howard H. (Bo) Callaway, former Secretary of the Army; Duane H. Cassidy, former Commander-in-Chief of the United States Transportation Command of the Military Airlift Command; Arthur Levitt, Jr., Chairman of the board of Levitt Media Company; James C. Smith II, P.E., an employee of Brown & Root and formerly a member of the Secretary of Defense's 1988 Base Closure Commission; Robert D. Stuart, Jr., former Chairman of the Board of the Quaker Oats Company; and Alexander Trowbridge, former Secretary of Commerce. [Courter Dep. Ex. 14 E–1 and E–2].

229. The Commission established four "teams" to evaluate compliance with the Defense Department's final criteria; (1) an Army Team, (2) an Air Force Team and (3) a Navy Team to evaluate the first four military criteria; and (4) a Special Team to evaluate the remaining four non-military criteria. [Hirsch Dep. at 9].

230. At the recommendation of Commissioner Smith, the Commission hired four additional individuals to supervise each of these teams. [May 17, 1991 BCRC Hearing]. As head of the Navy Team, the Commission hired Alex Yellin ("Yellin"), a Vice President of a Brown & Root subsidiary that was responsible for procuring federal contracts. [Courter Dep. at 266; Yellin Dep. at 9–10].

231. Yellin joined the Commissioner's Staff of May 1, 1991, and he decided that he would personally conduct the review and analysis of the Navy's shipyard base closure decisions. [Yellin Dep. at 10, 18–19].

232. On May 17, 1991, Alexander Trowbridge resigned from the Commission because of a conflict of interest arising out of his ownership of a majority of stock in certain companies that had significant Pentagon contracts. At least one other Commissioner, James C. Smith, II, is employed by a firm that has substantial military construction contracts with the Pentagon. Nevertheless, Trowbridge was the only Commissioner to resign.

233. The Commission established four procedures for gathering evidence to review the Defense Department's base closure proposals: (a) 15 public hearings in Washington, D.C. to receive information from the Defense Department, legislators and other experts; (b) 14 regional and site hearings to obtain public comment related to bases in such regions; (c) site visits by the Commissioners to the major facilities proposed for closure; and (d) review by the Commission's staff of the Armed Services' base closure processes and data. [Courter Dep. Ex. 14 vi–vii, 1–3 and G–1—G–2].

234. Under the Base Closure Act, the Commission was required to submit its Report to the President by July 1, 1991, setting forth its findings, conclusions and recommendations for closures and realignments inside the United States [10 U.S.C. §2903(d)(2)(A)].

V. The Base Closure Act Mandated That the Commission Set Aside Any Base Closure Recommendation That Substantially Deviated From the Force Structure Plan or the Final Criteria

235. The Base Closure Act provides that the Defense Secretary's recommendations must be set aside "if the Commission determines that the Secretary deviated substantially from the force structure plan and the final criteria in making recommendations." [10 U.S.C. §290(D)(2)(B)].

236. The Commission established procedures for determining whether the recommendations of the Secretary of Defense "deviated substantially" from the Force Structure Plan and final criteria, as follows:

"(a) Data used for evaluating Force Structure or one or more of the criteria are so inaccurate as to result in a change in an installation's status from a decision based on correct data; *or*

"(b) The methodology is flawed or was applied inconsistently so that the Force Structure or one or more criteria were effectively not considered, resulting in a change in an installation's status when an appropriate methodology is correctly applied." [Yellin Dep. Ex. 4 at 1]. In sum, the Commission's procedures required that "[g]iven valid data, the methodology used by each Service to evaluate bases must comply with the law [*i.e.* the Base Closure Act] and regulations [*i.e.* the Force Structure Plan, the final criteria and the Defense Department directives]. In addition, the methodology must have been applied consistently to like bases at discrete decision points during the process." [Yellin Dep. Ex. 4 at 1].

237. As demonstrated above, the Commission's Navy compliance team concluded on May 13, 1991 that the Navy's base closure process and decisions were fatally flawed and not in compliance with either the law or the regulations [Yellin Dep. Ex. 3 at 3–4].

W. The Private Meetings Between the Base Closure Commission and the Navy BSC Were Beyond the Scrutiny of the Public Hearing Process

238. The Base Closure Act established an independent Base Closure Commission to ensure that "the [base closure] process is open." [Courter Dep. Ex. 14 at 1–3].

239. The Base Closure Act required the Commission to conduct its proceedings in public and to open its records and deliberations to public scrutiny. [Courter Dep. Ex. 14 at 4–1].

240. As a member of Congress, Courter had been critical of the 1988 base closure process and actively involved in the enactment of the new 1990 Base Closure Act. [Courter Dep. at 89–90; Courter Dep. Ex. 7 at 1]. Courter had publicly identified two problems with the work of the prior Commission: "It was a secretive process. Neither the GAO nor members themselves, not committees felt that they were included or could even follow the work. Courter declared that the new Base Closure Act rectified those new problems: "The GAO has a role, it reports before and after the commission makes their report. Members of Congress will have a total access to our work and to the process. The hearings are open to the press, the public and Washington." [Courter Dep. at 91].

241. The Commission expressly invited and received public testimony in Washington, D.C. from members of Congress. [Courter Dep. Ex. 14 at vi–vii].

242. By letter dated April 23, 1991, the Commission established five pages of procedures to govern Congressional testimony at the Commission's hearings. The Commission's procedures provided that:

"All members of Congress have the opportunity to testify before the Commission in Washington, D.C. Members of Congress will have the opportunity to make introductory comments at regional hearings. However, their formal oral testimony and comments for the record should be presented at the Washington, D.C. hearing." [Verified Amended Complaint, ¶156].

243. The Commission's official procedures also provided that the "recommended deadline for receipt of written material is May 20 to ensure that the Commission has adequate time to review all written documentation." [Verified Amended Complaint, ¶157].

244. On May 22, 1991, the Commission received Congressional testimony on the

Philadelphia Shipyard in Washington, D.C. A regional hearing was held in Philadelphia on May 24, 1991. [Courter Dep. Ex. 14 at G-1 and G-2].

245. Courter testified that "the whole purpose of the public hearings and the input we received from communities was to *scrub the data, was to verify it*. To make sure that our conclusions were based on data that was accurate and data that was corroborated." [Courter Dep. at 113 (emphasis supplied)].

246. The data the Commission obtained from the Navy by July 1, 1991 had the same defect as that criticized by Courter under the prior statute: it was largely acquired in secret and the public was not given any opportunity to scrutinize it. [Nemfakos Dep. Ex. 7, 8; Yellin Dep. Ex. 7].

247. In blatant violation of the public hearing process mandated by the Base Closure Act, the Commission's staff and the Navy BSC held *private* meetings between May 20 and 29, 1991 from which the public and Congress were deliberately excluded. [Nemfakos Dep. Ex. 8].

248. Despite the Act's mandate that the Commission be independent, the purpose of the May 20-29 private meetings was to obtain data to justify the Navy's recommendations after the GAO refused to approve the Navy's closure process. [Courter Dep. Ex. 30-33].

249. At the time that the Commission announced that it intended to hold such meetings to require the Navy to explain its process, Senator Specter's office requested that his staff be permitted to attend these meetings. This request was denied. [Courter Dep. at 87-88].

250. At the first private meeting on May 20, 1991, the BSC advised the Commission staff that the Navy did not operate in the same manner as the Army. They did not track their criteria against the Department of Defense criteria. The criteria simply "didn't cut it." [Armfield Dep. at 28]. BSC member Nemfakos stated that the shipyard process eliminated the green rankings first and then excluded the others "as we thought of them. Didn't make a record of when it happened. Long Beach was a Step 5 because we screwed up." [Armfield Dep. at 55]. The Navy advised the Commission that initially the BSC wanted to close Long Beach and Philadelphia but they took Long Beach off the list because CNO Kelso "said he needed Long Beach, so it received a Step number 5 exclusion." The BSC candidly admitted its closure decisions were "[n]ot a measure of shipyard efficiency." [Armfield Dep. at 70].

251. At the May 20 private meeting, BSC member Nemfakos also informed the Commission staff that the Navy's base closure decisions were "subjective. We started with the comments of operators and then questioned them. There was a lot of give and take. *We can't reconstruct that. We didn't use numbers for four criteria and plug them into a machine*. The answers *would make us close the wrong bases*. That's the process we used in 1988, and we weren't happy with it. *You can't reduce such subjective things to numbers.*" [Nemfakos Dep. Ex. 8 at 2 (emphasis supplied); Armfield Dep. at 14-18].

252. BSC member Loftus similarly stated that there was no way to assign numbers to the criteria. [Armfield Dep. at 15]. Rather, the BSC "deliberately avoided quantifiable things." [Armfield Dep. at 19].

253. Despite the record keeping and internal control requirements in two Defense Department directives, the Navy conceded that there was no documentation of its process because they didn't think they needed it. [Armfield Dep. at 70]. The BSC confirmed that it could not reconstruct its decision process. [Armfield Dep. at 16]. As such, the BSC stated that a somewhat artificial record might be created *after the fact*. The Commission insisted that, if the Navy did not do it, the Commission would do it for the Navy. The Navy finally agreed that "Whether we want to or not, we'll have to give them a one or two-liner that explains why what looks like a green actually is a yellow or red." [Armfield Dep. at 36].

254. On May 22, 1991, the Commission issued a Press Release stating that, during the May 20 private meeting, the Commission staff learned that "the Navy used a great deal of subjective judgment in drawing up its list of recommendations" for closure and realignment. Despite the fact that the Commission had "repeatedly sought clarification from senior Navy Representatives," including "publicly ask[ing] for minutes, notes and any documentation that would give [the Commission] an idea of how the [Navy] came up with its recommendations," Courter publicly announced that what the Commission had received was "inadequate." [Courter Dep. at 180-183; Courter Dep. Ex. 11 at 1].

255. *After* the close of the public hearings relating to the Philadelphia Shipyard, the Commission requested that the Navy BSC provide it with additional information to "try to resolve missing gaps in the information provided." [Nemfakos Dep. Ex. 8 at Bates No. 586].

256. The Navy's BSC did provide additional documents and information to the Commission. [*See, e.g.*, Nemfakos Dep. Ex. 7 and Yellin Dep. Ex. 7]. However, some of this data was not provided to the Commission until *after* it had already concluded its final deliberations and drafted its Report. [June 30, 1991 Navy telecopy to Commission]. Moreover, the GAO was never afforded an opportunity to review or analyze this additional information. [Meyer Dep. at 123-124].

257. Senator Specter and Congressman Weldon also obtained key Navy documents opposed to the closure of the Philadelphia Shipyard which had not been produced by the Navy. [Courter Dep. at 29-31].

258. Despite repeated demands by members of Congress for a public hearing on the additional information supplied by the Navy, the Commission refused to allow any public scrutiny. Furthermore, despite the fact that the Act required the Navy to provide the Commission with documentation relevant to its base closure deliberations and decisions, the Commission never held public hearings to ascertain why the Navy did not produce all of its documents and what other documents had been withheld. [Courter Dep. at 29-31 and 39-41].

259. The public and interested members of Congress were never afforded a meaningful opportunity for public scrutiny and rebuttal of the Navy's documentation or deliberations. [Courter Dep. at 29-31 and 39-41].

X. The Navy Misrepresented Material Information to, and Withheld Key Documents and Testimony From, the Commission

260. The Base Closure Act mandates that the Secretary of Defense make "available to the Commission and the Comptroller General of the United States *all information* used by the Department in making its recommendations to the Commission for closures and realignments." [10 U.S.C. §2903 (c)(4) (emphasis supplied)].

261. Schafer, the Navy BSC Chair, represented to the Commission that "copies of *all the data received and considered by the BSC* have been previously provided to the Commission." [Yellin Dep. Ex. 7 at Bates No. 790 (emphasis supplied)].

262. In violation of the procedural mandates of the Act, the Navy did *not* provide the Commission or the GAO with *all* of the data that it had received and considered in recommending closure of the Philadelphia Shipyard. [Courter Dep. at 29-31; Yellin Dep. at 106-11, 157-158, 172, 177; Meyer Dep. at 78-81].

263. The limited discovery permitted in this case establishes that the Navy willfully misrepresented and withheld key information, which the Commission testified it "needed to determine if the Navy's recommendations were valid," regarding the Navy's decision to close the Philadelphia Shipyard. [Courter Dep. at 183]. The following summarizes the most salient of those misrepresentations and concealments:

(a) *Predetermination To Close Philadelphia Shipyard*. The Navy never informed the Commission that, during its base closure process, it had not considered all bases "equally without regard to whether the installation [had] been previously considered or proposed for closure or realignment," but reaffirmed the decisions to close the Philadelphia Shipyard represented by the "stealth list" and the Three Star Admiral Advisory Committee determination. [10 USC §2903(c)(3); Yellin Dep. at 106-111].

(b) *Net Operating Profits*. The Navy misrepresented to the Commission that the Philadelphia Shipyard costs the Navy $75 to $100 million each year. [Armfield Dep. at 69]. To the contrary, during fiscal years 1989 and 1990, Philadelphia showed a net operating profit for the Navy while the other seven shipyards were losing millions of dollars collectively. In fiscal year 1989, the Navy's Net Operating Result (NOR) reported that the eight Naval Shipyards lost cumulatively $247 million while Philadelphia showed a profit of $111 thousand. Similarly, in fiscal year 1990, the Navy's NOR reported that the eight Naval Shipyards lost cumulatively $151 million while Philadelphia made a profit of $243 thousand. [Naval Shipyard Net Operating Results—1989 and 1990].

(c) *Workload*. The Defense Department represented to the Commission that changes in the force structure "will reduce ship-repair requirements." [DoD April 1991 Report at 64]. The Commission therefore concluded that overall public shipyard workload is falling significantly because of force reductions and budget limitations." [Courter Dep. Ex. 14 at 5-27 and 5-28]. A March 1991 memorandum from NAVSEA's Admiral Claman to the Chief of Naval Operations confirmed, however, that the Navy's utilization of shipyards for large amphibious ships and other large vessels would be between 84.2% and 106.9% for fiscal years 1992 through 1997. [Claman Dep. Ex. 1; April 1991 Navy Detailed Analysis, Tab. C at 2]. Since the Navy requires that shipyards reserve 30% of their space for emergency repairs, it is clear that shipyards, such as the *Philadelphia Shipyard*, servicing large amphibious ships and other large vessels *will have no "excess" capacity during the relevant six year period and should have been excluded from further review under the base closure process*. [Claman Dep. at 42-43].

(d) *Nuclear Navy*. The BSC represented to the Commission that "Navy carrier forces in *the next 10-20 years* . . . will be largely composed of nuclear carriers." [Nemfakos Dep. Ex. 7 at III-3]. There was no support for this assertion in either the Force Structure Plan or any other Navy document presented to the Commission. [Courter Dep. 14 at B-1].

(e) *Nuclear Workload*. Based on misrepresentations made by the Navy, the Commission erroneously concluded that "the pro-

jected workload in nuclear shipyards during the 1990s was found to limit the potential for closing any nuclear shipyard *until the late 1990s.*" [Courter Dep. Ex. 14 at 5–28; Loftus Dep. at 76–77]. To the contrary, during the relevant six year Force Structure period, the drydocks at nuclear shipyards are not being fully utilized by *nuclear* workload. [Nemfakos Dep. Ex. 10 at Bates No. 332; Loftus Dep. at 59–60]. Moreover, the only years that the Navy arguably may fully utilize its nuclear drydocks are 1988–2000—a time period which could not be considered under the Base Closure Act's six year Force Structure period. Significantly, the Navy's projected workload at nuclear shipyards includes between 25–50% of work on non-nuclear ships, that could be scheduled at the Philadelphia Shipyard. [Loftus Dep. at 56].

(f) *Philadelphia's Workload.* The Navy misrepresented to the Commission that the Philadelphia Shipyard's workload was simply disappearing. [April 1991 Navy Detailed Analysis, Tab C at 12]. To the contrary, the Navy manipulated the Shipyard's workload by arbitrarily removing ships previously assigned to Philadelphia or refusing to assign additional ships to that yard for work:

"[S]omeone made the decision, for whatever reason, to move workload, of course." [Mackinnon Dep. at 267–268].

(g) *Feasibility of Closing a Nuclear Shipyard.* The Navy affirmatively represented to the Commission that it was "not practical to close a nuclear shipyard." [Claman Dep. at 58; Nemfakos Dep. Ex. 7 at III–3]. Absolutely no data was presented to the Commission on the feasibility of utilizing private nuclear shipyards on the East Coast, such as Newport News or Electric Boat. [MacKinnon Dep. at 66–67; Claman Dep. at 39]. Nor was any data presented (or produced during discovery) that analyzed the cost of closing, reopening or mothballing a nuclear shipyard. [Claman Dep. at 58, 59].

(h) *Cost to Retain Philadelphia as a Ship Repair Facility.* Based on Navy misrepresentations that to keep Philadelphia open costs the Navy $75–100 million per year, the Commission concluded that retaining Philadelphia as a Ship Repair Facility would "increase the cost for work performed at Philadelphia over the cost for the same work performed at a public shipyard with a traditional staffing." [Courter Dep. Ex. 14 at 5–28]. The Navy's documents contained no data or analysis that supported this conclusion. To the contrary, MacKinnon testified that, if conventional work was placed into Philadelphia, there would be no cost to operate the facility as a Ship Repair Facility since even "fixed costs" would be offset by the revenues realized from the Shipyard's workload. [MacKinnon Dep. at 261–262, 267]. In fact, documents withheld by the Navy established that shipyard efficiency would decrease, not increase, as a result of work being transferred from Philadelphia. A March 25, 1991 NAVSEA analysis, *which was never provided to the Commission*, concluded that, for Norfolk to execute the additional carrier workload proposed to be transferred from Philadelphia, Norfolk would have to "significantly increase their employment levels," thereby resulting in a drop in shipyard efficiency and an increased cost to the fleet of approximately $72.8 million, excluding the higher rate differentials for work performed at Norfolk. [Hekman Dep. Ex. 10 at Bates No. 101]. Philadelphia was the most cost-efficient of the eight Shipyards in the county. [Clark Dep. at 8–11; Hekman Dep. Ex. at 7].

(i) *OPNAVINST 3050.22 (Emergent Shipyard Work.* The recommendation to close the Philadelphia Shipyard ignored OPNAVINST 3050.22, a longstanding directive that required 2 geographically dispersed (strike-free) *Naval* shipyards on each coast capable of repairing conventional aircraft carriers in order to maintain *immediate* repair capability. [Nemfakos Dep. Ex. 9 at Bates Nos. 91 and 98]. The Navy misrepresented, and the Commission therefore concluded, that the combination of drydocks available at a *private* shipyard (Newport News) and the mothballing of Philadelphia's drydocks would satisfy this requirement. [Courter Dep. Ex. 14 at 5–27, 5–28].

(A) *Mothball Status.* Vice Admiral Hekman testified that mothballing the Philadelphia Shipyard would not preserve its drydocks for emergent use and would sacrifice a valuable capital investment facility for the Navy. [Hekman Dept. at 58–59]. As such, he repeatedly stated that closing a shipyard is "an irreversible decision." [Hekman Dep. at 59, 89].

(B) *Consideration of Private Shipyards.* The Navy failed to produce key internal Navy documents that described the risks involved in relying on privately owned shipyards for the Navy's emergent carrier requirements. For example, a March 1991 Memorandum from NAVSEA's Admiral Claman to the Chief of Naval Operations—*a document that the Navy failed to produce to the Commission*—clearly recognized that [Claman Dep. Ex. 1 at Bates No. 602]:

"Closure of Philadelphia Naval Shipyard, without retention of the large carrier capable dry docks creates a shortfall in dry dock capability for emergent dockings of aircraft carriers . . . Without the dry docks available at Philadelphia, the only other dock capable of taking an emergent carrier docking is at Newport News Shipbuilding (NNSB) . . . This dock is privately owned and its docking schedule is not controlled by the Navy. The cost to have NNSB provide a dedicated dock under contract is considered prohibitive."

The Commission was also not advised that the Atlantic Fleet advised the BSC that they required "Philadelphia Naval Shipyard as a 'safety valve' when the private sector is unable to successfully complete" repairs. [Hekman Dep. Ex. 10 at Bates Number 98].

(j) *The False "Cost Savings" Associated with Closing Philadelphia.* The Navy misrepresented that it would realize recurring cost savings in the amount of $36 million by closing the Philadelphia Shipyard. [DOD April 1991 Report at 65]. Navy studies, however, clearly proved that there are no "major cost savings" realized by the closure of shipyards.

"Historically, major cost savings for program execution are not realized by the closure of shipyards. In the 1970s, closures of three naval shipyards demonstrated that little if any apparent cost savings can be accomplished on a program basis. This was documented in the 1980 study 'U.S. Shipyard Program Planning. A Basis for Current and Long Range Planning for Facilities and Manpower' which reviewed the impacts of the 1970 closures of naval shipyards." [MacKinnon Dep. Ex. 24 at 3]. Vice Admiral Hekman, then commander of NAVSEA, concurred that closing the Philadelphia Shipyard would save no more than approximately $5 million because shipyard work is a Navy Industrial Funded ("NIF") activity. [Hekman Dep. at 74]. As such, the work has to be performed and "paid for somewhere. So you don't save program dollars." [Mac-Kinnon Dep. at 262]. "There was a mistaken understanding that if we didn't sent ships [to Philadelphia] we would save the money that would normally be spent to overhaul ships. And I said that analysis was wrong. But that was the initial work group's analysis. In order to understand that, you have to understand how the Navy funds [its] shipyards." [Hekman Dep. at 74]. The Navy also concealed the fact that the COBRA model utilized to calculate the recurring cost savings to be realized by closure of the Philadelphia Shipyard did not reflect NIF activities and was therefore unreliable. [MacKinnon Dep. at 182]. On March 25, 1991, the Navy analyst responsible for the Philadelphia Shipyard COBRA analysis concluded that "the economic analysis conducted using COBRA will probably not withstand an outside audit." [MacKinnon Dep. at 301–302].

(k) *Costs of Closure.* The Navy originally represented to the Commission that the one-time cost of closing Philadelphia would be $102 million. [Clark Dep. at 117]. There was absolutely no basis in fact for this closure cost figure. In documents *never produced to the Commission*, NAVSEA had estimated on March 25, 1991 that the one time cost of closing Philadelphia Naval Shipyard was *$458 million*, excluding environmental costs. [Hekman Dep. at 64]. These numbers were consistent with prior NAVSEA calculations and "were known well before this." [Hekman Dep. at 72]. Other *withheld* Navy documents estimated that the cost of closing Philadelphia would be $592 million. [Hekman Dep. Ex. 12]. Not surprisingly, the conclusion attached to the evaluation sheets for *each* of these cost estimates stated: "Remove Philadelphia NSY from base closure list." [Hekman Dep. Ex. 12]. Significantly, it was not until after the President accepted the Commission's closure recommendations that the Navy finally directed the Philadelphia Shipyard to develop actual cost closure data. [Clark Dep. at 113–115, 117; Clark Dep. Ex. 4 at 9]. On July 12, 1991, the Philadelphia Shipyard submitted a "conservative" *$1 billion dollar* estimate for closure of the Shipyard. [Clark Dep. Ex. 4; Clark Dep. at 118–120].

(l) *Defense Department Criterion 5: Payback Period.* The Navy originally represented to the Commission that the one-time cost of closing Philadelphia was $129.8 million, with a break-even period of 5 years and a return on investment period of 3 years. The annual savings were projected at $36.0 million, including a $29 million salary savings calculation from the projected reduction of civilian employees. [April 1991 Navy Detailed Analysis Report, Tab C at 13]. On June 13, 1991, the Navy represented to the Commission that, for purposes of the analysis, the Navy was going to reassign the USS Forrestal to Philadelphia which would reduce the one-time cost figure to $102 million and the payback period to 2 or 3 years. [June 30, 1991 BCRC Hearing at 221].

However, only after the President approved the base closure list did the Navy calculate the actual savings that would result from closing the Philadelphia Shipyard. A Department of Navy FY 1993 Apportionment Review, DOD Base Realignment Closure Program II Report dated August 1, 1991 recognized that there are "no savings" by a reduction of civilian employees at a shipyard since "under NIF, people go with workload." [Navy 1993 Apportionment Review]. The Navy's budget analysis concluded that the annual recurring savings would be only $5 million, not $36 million. [Navy 1993 Apportionment Review]. Significantly, if the true costs of closure, as shown in the FY 1993 Apportionment Review, are applied to COBRA, the payback period to close *the Philadelphia Shipyard becomes nearly infinite under the Defense Department's February 13, 1991 guidelines for calculating costs and savings.* [DOD April 1991 Report at 150–153].

264. Courter testified that the 1991 base closure process was totally different than the process in 1988 because people who had dissenting and different views had an opportunity to testify before the Commission. [Courter Dep. at 127]. To the contrary, the Admiral who was admittedly the most knowledgeable individual in the Navy with respect to shipyards and whose testimony could have corrected the foregoing misrepresentations, was prevented from testifying before the Commission. [Yellin Dep. Ex. 6; Hekman at 49; Yellin Dep. at 93-94].

265. On June 18, 1991, Yellin—the Commission's head of the Navy Team—telephoned Vice Admiral Herman to discuss his position on the Naval shipyards. During their telephone conversation, Yellin was advised by Hekman that:

"Hekman had intended to testify at the Philadelphia Regional Hearing but had been *asked by a senior Navy official not to testify.* Friends, still with the Navy, told him that he was being accused within the Navy of providing documents to Philadelphia officials that were critical of the proposed closure . . . He believed that his opposition to the proposed closure had and would continue to hurt his civilian employment opportunities." [Yellin Dep. Ex. 6 (emphasis supplied].

266. Yellin stated that during their conversation, Vice Admiral Hekman advised him that he "was asked to retire early, in part he believes, because he persisted in disagreeing with the decision to close the Philadelphia Naval Shipyard." [Yellin Dep. Ex. 6].

267. The statements made by Vice Admiral Hekman to the Commission's staff were also made to William Angus, the Director of the Chamber of Commerce of Southern New Jersey. Vice Admiral Hekman informed Angus during several telephone conversations prior to May 17, 1991 that "he had been 'retired' early because of views which he held" and the "many [civilian employment] doors have been closed to him, apparently because of his posture on certain issues within the Navy and DOD." Vice Admiral Hekman was very concerned about the public nature of the Commission hearings because he had "yet to be advised of his permanent retirement status." [Courter Dep. Ex. 3 at Bates No. 125-126, 128, 131-132].

268. Yellin and Angus both confirmed the veracity of their letter and memorandum. [Angus Affidavit; Yellin Dep. at 183]

269. Vice Admiral Hekman testified that he was convinced that his testimony before the Base Closure Commission would alter nothing because the Commission's "conclusions were foreordained" and the Commissioners were "going to give Secretary Cheney what he asked for, regardless of what [he] or anyone else said." [Hekman Dep. at 86, 106]. When asked why he believed this to be true, Vice Admiral Hekman testified that they are "members of the same club . . . that's sort of the way I felt." [Hekman Dep. at 86].

270. Hekman testified that because of the need for Philadelphia's drydocks, he was convinced the Shipyard would not be closed:

"I felt, and have always felt, as I stated earlier, the Philadelphia Shipyard is not going to close. I have always felt that Congress in the end would stop the Navy from doing what I consider to be *an unwise thing.* And I still feel that way today." [Hekman Dep. at 102].

Y. The Base Closure Commission's July 1, 1991, Base Closure Report to the President

271. On July 1, 1991, the Commission submitted its recommendations for the closure or realignment of U.S. military installations to the President. [Courter Dep. Ex. 14 at 1].

272. The Commission findings with respect to the Philadelphia Shipyard were as follows:

"The Commission found that the overall public shipyard workload is falling significantly because of force reductions and budget limitations. The projected workload in nuclear shipyards during the 1990s was found to limit the potential for closing any nuclear shipyard until the late 1990s.

"The largest portion of Philadelphia's recent workload has been CV-SLEP, which the Navy desires to terminate. However, Congress has passed legislation that requires a CV-SLEP at Philadelphia. The Commission found that this CV-SLEP should be completed in mid-1996, about a year before the required closure date.

"Workload is available that could be diverted from public and private East Coast shipyards to Philadelphia to bring its activity up to levels that justify keeping it open. However, this would limit the Navy's ability to meet its target of putting 30 percent of its repair work in private yards . . .

* * * * *

"The Commission found that the combination of carrier-capable drydocks at Norfolk Navy Shipyard, [the private] Newport News Shipbuilding, and the mothballed drydocks at Philadelphia provide capacity for unplanned requirements." [Courter Dep. Ex. 14 at 5-28].

273. There is no written record of the Commission's analysis of the Navy's application of its data to the final criteria under the Act. [Courter Dep. at 188-189].

274. Nor is there any record of the Commission's analysis of the Navy's procedural compliance with the Act or the criteria. Due to the lack of any written record, Courter was asked to describe the Commission's evaluation:

"Q. Now that you know, you say what methodology the Navy used to apply the Department of Defense's eight criteria to all shipyards equally and fairly, would you describe that methodology, please?

"A. . . . The Base Structure Committee . . . made a determination based on all available data, the interviews conducted by the BCS, and the information of the VCNO study as to which—whether there was excess capacity in any particular category.

"They determined that there was excess capacity in the shipbuilding category. They examined all of those. They made further analyses; applied color codes to the various yards, shipyards. They showed some of them, having—perhaps one had all green. Most of them had a mix. They met and had free exchange, and differing points of view, which obviously you are trying to make an important point out of. . . . They eliminated, after—they eliminated some yards because of the fact that they were rated so well. They eliminated others because they were very important for repair of nuclear ships, surface ships—subs, I would imagine. And they looked very carefully at Philadelphia and concluded that, . . . Philadelphia was the most logical one to be taken off the list." [Courter Dep. at 219-221].

275. On Wednesday, July 10, 1991, the President transmitted to Congress his approval of the Base Closure Commission's list of recommendations for base closure and realignment.

Z. The Commission Staff's Own Analysis of the Process Confirms the Commission's Violation of the Base Closure Act

276. On July 10, 1991, Paul Hirsch, Director of Review and Analysis for the Commission, requested that each "Team," *except for the Navy Team,* submit an "After Action Report" to evaluate the Commission's process. The Navy Team was instructed not to finalize its Report until after this litigation was concluded. [Hirsch Dep. at 47, 57-58]. Despite repeated demands that the Commission produce drafts of the Navy After Action Report, the Commission has steadfastly refused.

277. On July 19, 1991, the Special Team responsible for review and analysis of the nonmilitary criteria "for each of the three military service selection processes" submitted a report that represented "the strong consensus of the Special Team members." [Hirsch Dep. Ex. 1 at 1]. This After Action Report aptly summarizes the Commission's defective process.

278. The Special Team concluded that "The Commission did not effectively utilize the time allowed under the defense Base Closure and Realignment Act." [Hirsch Dep. Ex. 1 at 3]. "The four days allotted for base briefings, final deliberations and preparation of the final report was too short." [Hirsch Dep. Ex. 1 at 3]. The Special Team also concluded that there was not enough time to fully answer all Commissioner questions: "The motion process was rushed. And the extreme efforts people were forced to take to prepare the final report before the statutory deadline was evident in the poor quality of the 'advance copy' of the report." [Hirsch Dep. Ex. 1 at 3].

279. The Special Team also criticized the Commissioner's communication with the staff and characterized communication with the Commissioners as "nearly non-existent":

"The absence of communications with the Commissioners kept the staff frustrated and uncertain of whether their efforts were on track or of any significance. R&A was being conducted with a clear definition of 'substantial deviation', yet staff was never able to communicate their findings in this regard to the Commissioners. *It is believed that the Commissioners went into the final voting without a clear understanding of the details of the DoD evaluations and the staff analysis results.*" [Hirsch Dep. Ex. 1 at 6-7 (emphasis supplied)]. "Many hearings and briefings to the Commission were poorly attended by the Commissioners. This resulted, at best, in many topics and discussions being repeated and, at worst, in some Commissioners making decisions with less information than others." [Hirsch Dep. Ex. 1 at 9].

280. The Special Team also concluded that:

"The concept of 'substantial deviation' did not play a predominant role in the review and analysis process. *It should have.* The Commissioners must thoroughly know the process used by the services to determine that they substantially deviated from force structure or criteria. During deliberations, it often appeared that the Commissioners 'bootstrapped' their substantial deviation justifications from conclusions reached for other reasons. Early briefings could have prevented this." [Hirsch Dep. Ex. 1 at 9 (emphasis supplied)]. Since the "substantial deviation" inquiry was the Commission's principal means for determining whether the Navy and the Defense Department had complied with the Base Closure Act, this conclusion is especially devastating to the Commission's conduct herein.

AA. The Senate's Decision Not To Disapprove the Base Closure List Was Not Intended To Pass Judgment on Whether the Navy, the Department of Defense and the Base Closure Commission Properly Complied With the Procedures Set Forth in the Base Closure Act

281. To strike down the Commission's base closure list with respect to the Philadelphia

Shipyard, Congress was required to enact a joint resolution disapproving the *entire* list of military installations recommended for closure and realignment. [10 U.S.C. §2904(b)].

282. Although a joint resolution was introduced into both the House and the Senate, Congress failed to enact the required joint resolution.

283. Thereafter, it became apparent that the Navy intended to rely on Congress' failure to enact the joint resolution as a finding *by Congress* that the Navy, the Defense Department and the Commission had complied with the procedural mandates of the Base Closure Act in making base closure recommendations. [Defendants' Reply in Support of Motion to Dismiss the Verified Amended Complaint at pp. 13].

284. To eliminate any possible question raised with respect to Congress' actions, on September 26, 1991 the Senate accepted an Amendment to the Defense Appropriations Bill that recognized the jurisdiction of the United States District Court for the Eastern District of Pennsylvania to rule on whether or not the Navy, the Base Closure Commission and the Defense Department complied with the Base Closure Act in ordering the Philadelphia Shipyard closed.

285. Specifically, the Amendment states that:

"It is the sense of the Senate that in acting on the Joint Resolution of Disapproval of the 1991 Base Closure Commission's recommendations, the Congress takes no position on whether there has been compliance by the Base Closure Commission, and the Department of Defense with the requirements of the Defense Base Closure and Realignment Act of 1990. Further, the vote on the Resolution of Disapproval shall not be interpreted to imply Congressional Approval of all actions taken by the Base Closure Commission and the Department of Defense in fulfillment of the responsibilities and duties conferred upon them by the Defense Base and Realignment Act of 1990, but only the approval of the recommendations issued by the Base Closure Commission." [102nd Congress, 1st Sess., 137 Cong. Rec. 135, 13811].

286. Prior to the Amendment being offered, Senator Specter clarified that the Amendment was intended to eliminate any question that "the relevant courts, federal courts, will have jurisdiction on any challenge on procedural deficiencies . . . I have discussed it broadly in the Senate, with the distinguished chairman and the ranking member." [102nd Congress, 1st Sess., 137 Cong. Rec. 135, 13781].

BB. The Philadelphia Naval Shipyard Will Suffer Irreparable Harm as a Result of the Department of Defense's and the Base Closure Commission's Failure To Follow the Procedural Mandates of the Base Closure Act

287. Pursuant to the Base Closure Act, the Philadelphia Shipyard must be completely deactivated by the end of fiscal year 1996. If the Navy is able to reassign the Shipyard's workload, the Navy is permitted to close the Shipyard at an earlier date. [10 USC §2904(a)].

288. The Base Closure Act proscribed, however, the Secretary of Defense from carrying out any closure or realignment recommendation *prior* to the expiration of the statutory time period for Congressional approval or disapproval of the joint resolution. [10 USC §2094(b)].

289. Flouting this statutory proscription, the Navy unlawfully predetermined that it would close the Philadelphia Shipyard and engaged in egregious and deliberate conduct designed to prevent Congressional or judicial interference with such closure *prior* to the expiration of the joint resolution time period. [10 USC §2904(b)].

290. The Navy's plan included, *inter alia*, a scheme to immediately "starve" the Shipyard to death by removing all of its incoming workload. [Claman Dep. Ex. 9 at 3-4].

291. In April 1991—*before* the Base Closure Commission had even commenced its deliberations on the Navy's base closure recommendations—the Navy removed the following ships and vessels from the Philadelphia Naval Shipyard's workload schedule:

Ship	FY	Est. Overhaul	Reassignment
USS SAIPAN (LHA2)	94	11 months	to Norfolk.
USS CANOPUS (AS34)	95	4 months	to Charleston.
USS SARATOGA (CV60)	95	12 months	to Norfolk.
USS AMERICA (CV66)	96	24 months	to Norfolk.
USS SIMON LAKE (AS33)	97	4 months	to Charleston.
USS FORRESTAL (AVT59)	98	11 months	to Norfolk.

[Claman Dep. Ex. 9 at 3-4].

292. Since Shipyard workers who are employed by the various planning groups typically work on ships and vessels which are not scheduled to arrive at the Shipyard for one to three years, the significance of reassigning the above workload is that Philadelphia will be compelled to immediately begin layoffs of its highly skilled trades people and workers unless compensating workload is assigned. [Clark Dep. at 63-68, 105-106].

293. The above reassignments were made without consideration of whether such shipyards had the necessary drydock space to perform such work, and manifest a clear intent by the Navy to insulate its decision to close the Shipyard from review by Congress and the Courts. [Yellin Dep. at 185-186].

294. The Navy's intent to make closure of the Philadelphia Shipyard irreversible, and its improper manipulation of data, is further established by the Navy's misconduct with respect to the Navy's award of ship overhaul contracts that are subject to public/private competition under the Competition in Contracting Act. [Clark Dep. at 43-44].

295. Congress has statutorily recommended that 30% of all overhauls and repairs of ships and vessels be subject to public/private competition to reduce costs to the taxpayer and require efficiencies in the Government. This guideline has historically been adhered to by the armed services. [Verified Amended Complaint, ¶195].

296. Pursuant to the Competition in Contracting Act, the Navy recently placed five ships up for bid in the public/private sector: USS Sprague, USS Patterson, USS Haley, USS Rodgers and the USS Daniels. [Verified Amended Complaint, ¶196].

297. Despite the fact that the Philadelphia Shipyard was the lowest bidder on all but one of the public/private bid packages, the Shipyard was *now* awarded *any* of these contracts. [Verified Amended Complaint, ¶197].

298. The Navy, through NAVSEA, engineered this unfair result by arbitrarily imposing unprecedented charges on the Shipyard and creating unjustified and specious deficiencies in the Shipyard's bid proposals. [Clark Dep. at 43-44]. For example, the Commander of the Philadelphia Shipyard, Capt. Clark, agreed that the Shipyard's best and final offer was in fact the lowest bid on the USS Sprague. [Clark Dep. at 43-44]. However, the bid was not awarded to Philadelphia because "irrational and wrong" "costs were added into our bid without our knowledge." [Clark Dep. at 44-46].

299. The Navy has also ceased sending information regarding future bids in the public/private competition sector to the Philadelphia Shipyard. [Verified Amended Complaint, ¶199].

300. In April 1991, the Navy also attempted to officially remove from the Philadelphia Shipyard's workload, the USS KENNEDY (CV67), a 24 month SLEP expressly authorized by Congress to be performed *in Philadelphia*. [Claman Dep. Ex. 9 at 3-5].

301. Despite the fact that, prior to the enactment of the Base Closure Act, the Navy consistently maintained the need to perform a "SLEP"—not an overhaul—on the USS Kennedy, on or about July 10, 1991 the Navy represented to the Senate Armed Services Committee, of which Senator Warner *of Virginia* is the ranking minority member, that it only intended to do a complex overhaul on the USS Kennedy in *Norfolk, Virginia*. The Navy therefore requested that the Senate Armed Services Committee deauthorize the 1991 and 1992 appropriations regarding the SLEP of the USS Kennedy in Philadelphia. [Verified Amended Complaint ¶¶190-193].

302. Clark testified that approximately 6,000 to 7,000 people would be employed if the USS Kennedy SLEP came to Philadelphia. [Clark Dep. at 68 and 106]. However, without compensating workloads, if the USS Kennedy was reassigned in 1993 to a shipyard other than the Philadelphia Shipyard for a SLEP or an overhaul, the Philadelphia Shipyard for all intents and purposes would be forced to close, irreversibly. [Clark Dep. at 66-67 and 106; Hekman Dep. at 59, 89].

303. Moreover, since a shipyard needs two to three years before a ship actually arrives to start work on the planning stage, the Navy's refusal to fund the advanced planning on the USS Kennedy has resulted in the Philadelphia Shipyard having a "number of design engineers for whom" the shipyard would have no work. [Clark Dep. at 64 and 68].

304. Specifically, Capt. Clark testified that he had approximately 250 to 300 professional and technical personnel at the shipyard. He estimated that the shipyard would lose at a minimum 100 of those people by the end of the calendar year 1991. He also testified that some of those people would not be easily replaced. [Clark Dep. at 105].

305. The foregoing clearly establishes the Navy's determination to prevent *any* new work from coming into the Philadelphia Shipyard.

306. As a result of the Navy's announced intention to reassign the USS Kennedy to Norfolk, 1,400 layoffs were scheduled during the first half of the next fiscal year with 400 of these layoffs to occur commencing on September 13, 1991. To implement these layoffs, Capt. Clark was required to request the appropriate Reduction in Force ("RIF") [Clark Dep. at 66-70; Verified Amended Complaint, ¶204].

307. Prior to 1991, Capt. Clark had never sought RIF authority at any time during his prior ten years as Commander of the Philadelphia Shipyard. [Clark Dep. at 63].

308. Due to low morale and a belief that the Shipyard could sustain a sufficient workload, Capt. Clark unilaterally announced to the Philadelphia Shipyard workforce that there would be no RIF's at the Shipyard during 1991. [Clark Dep. at 77 and 99-100].

309. Capt. Clark immediately was contacted by Admiral Claman who was extremely upset that Clark had issued the announcement to the workforce without prior approval of the Secretary of the Navy. [Clark Dep. at 77 and 81].

310. Admiral Claman subsequently contacted Captain Clark and advised him that the Navy had agreed that there would be no RIF in 1991. However, the RIF scheduled for the Spring of 1992 would go forward as

planned and that requested force reduction should number at least 800 employees. [Clark Dep. at 85; Claman Dep. at 20–24].

311. Thereafter, due to Congressional and public outcry, the Navy finally rescheduled the USS Kennedy to Philadelphia.

312. Despite the reassignment of the USS Kennedy, the current RIF plan for the spring of 1992 is still approximately 10 percent of the current workforce of the Philadelphia Shipyard. [Claman Dep. at 24]

313. The foregoing conduct of defendants has caused and will cause plaintiffs to suffer immediate and irreparable harm.

314. According to the Navy's December 1990 Final Environmental Impact Statement for Base Closure/Realignment of the Philadelphia Naval Shipyard ("FEIS"), the direct economic consequence of the proposed closure of the Philadelphia Shipyard includes a reduction in present Navy employment in the metropolitan Philadelphia region (which includes portions of the States of Pennsylvania, New Jersey and Delaware) by 88 percent, which represents eliminating directly almost 15,000 employment positions and indirectly causing the loss of an additional 7,384 jobs in the Philadelphia area. [FEIS at S–8, S–9].

315. The FEIS states that the proposed closure would add an estimated 16,856 workers to the unemployment rolls (a 17.4 percent increase) and increase in unemployment in the region. [FEIS at S–9].

316. The FEIS also states that "many employees of Philadelphia Naval Shipyard would experience difficulty re-entering the labor force without considerable retraining." [FEIS at S–9].

317. According to the FEIS, the closing of the Philadelphia Naval Shipyard will cause a substantial increase in unemployment and a migration of Shipyard employees from the Philadelphia region to other states in search of job opportunities along with a consequent decrease in regional and state income and overall tax revenues for these states. [FEIS at 4.PH–10—4.PH–18].

318. According to the FEIS, direct income and expenditures that would be withdrawn from the Philadelphia region as a result of the proposed closure would total $536.9 million. [FEIS at S–9].

319. An Economic Impact Report prepared by the Pennsylvania Economy League ("PEL") and submitted to the Naval Facilities Engineering Command on October 17, 1990 by the Commonwealth of Pennsylvania and the State of New Jersey concluded that closing the Philadelphia Shipyard would have a much greater impact on the economy of Philadelphia and the entire tri-state region than that set forth in the FEIS since the Shipyard is the largest employer in the Philadelphia area. [PEL at v-xii].

320. Economic activity connected with the Philadelphia Shipyard accounts for $2.1 billion in gross product in the Philadelphia metropolitan region. [PEL at ix].

321. The PEL's Economic Impact Report concluded that the unemployment rate would jump 16.2 percent from 7.8 percent to 9.1 percent in the Philadelphia region, that the region would suffer a loss of $915 million in wage and salary income and retail sales would decline $382.8 million. [PEL at vii, ix].

II. CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1331, 1337, 1346 and 1361; 28 U.S.C. §§2201 and 2202; and 5 U.S.C. §§701 *et seq.*

2. Venue is properly laid in the Eastern District of Pennsylvania, pursuant to 28 U.S.C. §1391.

A. Standards for Granting a Preliminary Injunction

3. To obtain a preliminary injunction in this Circuit, plaintiffs must establish four essential elements: (1) that they have a reasonable probability of success on the merits of their underlying claim; (2) that they will be irreparably injured by denial of the requested injunction relief; (3) that the denial of the preliminary relief will result in greater harm for plaintiffs than that experienced by defendants; and (4) that the granting of preliminary relief will be in the public interest. *Sullivan v. City of Pittsburgh*, 811 F.2d 171, 181 (3d Cir. 1987), *cert. denied*, 484 U.S. 849 (1987); *SI Handling Systems, Inc. v. Heisley*, 753 F.2d 1244, 1254 (3d Cir. 1980).

4. The Court need only determine that plaintiffs have a fair or reasonable probability of success on the merits. *Moteles v. University of Pennsylvania*, 730 F.2d 913, 919 (3d Cir. 1984), *cert. denied*, 469 U.S. 855 (1984); *Oburn v. Shapp*, 521 F.2d 142, 148 (3d Cir. 1975).

B. Plaintiffs Have a Reasonable Probability of Success on the Merits

5. The Court must set aside agency action if the action was arbitrary and capricious, an abuse of discretion, or not otherwise in accordance with law, or if the action failed to meet statutory, procedural or constitutional requirements. 5 U.S.C. §706; *Maxey v. Kadrovach*, 890 F.2d 73, 76 (8th Cir. 1989); *Makair, Inc. v. Civil Aeronautics Board*, 744 F.2 1383, 1385 (9th Cir. 1984); *Great Salt Lake Minerals and Chemicals Corp. v. Marsh*, 596 F. Supp. 548, 552 (D. Utah 1984); *see also Marshall v. Lansing*, 839 F.2d 933, 943 (3d Cir. 1988).

6. An agency's violation of a statute or non-compliance with statutory procedures constitutes arbitrary and capricious agency action and requires the setting aside of agency action. 5 U.S.C. §706; *Gloucester County Concerned Citizens v. Goldschmidt*, 533 F. Supp. 1222, 1228 (D.N.J. 1982).

7. The Navy, Department of Defense and Base Closure Commission are agencies within the meaning of the Administrative Procedures Act, 5 U.S.C. §551.

8. The express purpose of the Base Closure Act is "to provide a fair process that will result in the timely closure and realignment of military installation . . ." [10 U.S.C. §2901(b)].

9. The Base Closure Act places specific mandatory, non-discretionary duties on the Department of Navy, Department of Defense and the Base Closure Commission.

10. Defendants' compliance with the procedural requirements of the Base Closure Act was mandatory and non-discretionary.

C. Defendant's Failure to Consider All Naval Installations Equally

11. The Base Closure Act imposed a mandatory duty on the defendants to "consider all military installations inside the United States equally without regard to whether the installations have been previously considered or proposed for closure or realignment by the Department [of Defense]." [10 U.S.C. §2903(c)(3)].

12. The Department of Navy had reached the conclusion to recommend closure of the Shipyard to the Base Closure Commission based on the SECDEF 17, "stealth list" and Three Star Admiral Advisory Committee recommendations before the Navy even began any analysis of installations pursuant to the Base Closure Act.

13. The Navy's use of and reliance on SECDEF 17 and the "stealth list" and the Three Star Admiral Advisory Committee list resulted in the failure of defendants to consider the Shipyard equally without regard to the fact that it had been recommended for closure before the enactment of the Base Closure Act, and therefore violated §2903(c)(3) of the Base Closure Act, and constituted arbitrary and capricious agency action.

14. The Navy Base Structure Committee's manipulation of, and disregard for, data concerning alleged "excess capacity" at the Shipyard, the cost of closure of the Shipyard, and the scheduling of workloads at Naval shipyards, constitute arbitrary and capricious agency action and are inconsistent with the letter and spirit of §2903(c)(3) of the Base Closure Act requiring that all installations be treated equally.

15. The Secretary of the Navy violated §2903(c)(3) of the Base Closure Act by concurring in the recommendations contained in the "stealth list" of the Three Star Admiral Advisory Committee that the Shipyard be closed on the basis of analyses and procedures which predated the passage of the Base Closure Act.

16. The Commission's failure to consider all Naval installations inside the United States equally, without regard to whether the installations had been previously considered or proposed for closure or realignment, violated §2903(c)(3) of the Base Closure Act and constituted arbitrary and capricious agency action.

D. The Navy's Impermissible Use of, and Reliance on, an Additional Criterion Outside the Final Criteria

17. Agency action is arbitrary and capricious and must be invalidated if the agency relied on factors which Congress did not intend for the agency to consider. *Motor Vehicles Manufacturers Association v. State Farm Mutual Insurance Company*, 463 U.S. 29, 43 (1983).

18. The eight final criteria promulgated by the Secretary of Defense were "final criteria" which, along with the force structure plan, were to be the exclusive basis on which recommendations for closure and realignment of military facilities were to be made. [10 U.S.C. §§2903(b)(2)(A) &3903(c)].

19. The Navy's use of a ninth criterion not published and adopted in accordance with §2903 of the Base Closure Act, the so-called "Step 5" criterion—the direct result of which was the recommendation that the shipyard should be closed—violated §§2903(b)(2)(A) and 2903(c) of the Base Closure Act, constituted arbitrary and capricious agency action, and was beyond the scope of the Navy's statutory authority. *See State Farm*, 413 U.S. at 43; *Farmworker Justice Fund. Inc. v. Brock*, 811 F.2d 613, 622 (D.C. Cir. 1987).

20. The Commission's conclusion that the recommended closure of the Shipyard did not deviate substantially from the Navy's force structure plan and final criteria was arbitrary and capricious and not in accordance with law.

E. Defendants' "Stonewalling" Prevented the GAO From Performing Its Statutory Duties

21. The Base Closure Act imposed a mandatory, non-discretionary duty on the Secretary of Defense and the Secretary of the Navy to "make available to the Commission and the Comptroller General of the United States all information used by the Department in making its recommendations to the Commission for closures and realignment." [10 U.S.C. §2903(c)(3)].

22. The purpose of this requirement was to allow the GAO to monitor the closure and realignment recommendation process as it occurred and report its findings to Congress.

23. The failure of the Secretary of Defense and the Secretary of the Navy to make infor-

mation concerning the Navy's deliberations and decisions available to the GAO violated §2903(c)(3) of the Base Closure Act and constituted arbitrary and capricious agency action.

24. The failure of the Secretary of Defense and the Secretary the Navy to provide the GAO with the data necessary for the GAO to perform its statutorily mandated duty to assist the Commission in its review and analysis of the recommendations for base closures made by the Navy and the Department of Defense violated §2903(d)(5)(A) of the Base Closure Act and constituted arbitrary and capricious agency action.

25. The requirement that the GAO "transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process" placed a mandatory and non-discriminatory duty on the Secretary of the Navy and the Secretary of Defense to provide the data necessary for the GAO to perform this statutory function. [10 U.S.C. §2903(d)(5)(B)].

26. The failure of the Navy's Base Structure Committee to keep minutes of their deliberations or to document their selection process, as well as their use of an admittedly subjective process, disabled the GAO from analyzing the Secretary of Defense's recommendations for closures and realignments of Naval installations and therefore violated §§2903(c)(3) and 2903(d)(5)(B) of the Base Closure Act and constituted arbitrary and capricious agency action.

27. The failure of the Base Closure Commission to ensure that the Secretary of Defense complied with the GAO requirements, and the Commission's failure to require the GAO to submit a revised report analyzing the Navy's recommendation and selection process, violated §§2903(c)(3) and 2903(d)(5)(B) of the Base Closure Act and constituted arbitrary and capricious agency action.

28. The private submission of data by the Navy and Defense Department to the Commission after the transmission of the GAO report to Congress and the Commission did not cure the violations of §§2903(c)(3) and 2903(d)(5)(B) of the Base Closure Act, because the GAO was the only statutorily mandated agency authorized to monitor the Navy's selection process as it occurred, and furthermore the GAO never prepared a report analyzing this belatedly-submitted data.

29. The shortcomings in the Navy's process for determining base closures identified by the GAO, including (1) insufficient justification to support the military ratings for Navy installations, (2) the implementation and use of an inconsistent color coding system to rate military bases and (3) the Navy's failure to assign responsibility for developing and implementing an internal control plan to ensure the accuracy of information used by the Navy in its base structure reviews, violated §§2903(c)(3) and 2903(d)(5)(B) of the Base Closure Act and constituted arbitrary and capricious agency action.

30. The Commission's going forward to deliberate on the Navy's recommendations for base closure and realignment despite the fact that the GAO had not performed its statutory duty of reviewing and analyzing the Navy's recommendations and selection process violated §§2903(c)(3) and 2903(d)(5)(B) and constituted arbitrary and capricious agency action.

31. The Commission's decision to adopt the list of closure and realignment recommendations made by the Navy's Base Structure Committee, even though the GAO had found that the Navy and its Base Structure Committee (i) had not treated all bases equally, as required by the Base Closure Act and (ii) had not complied with the Secretary of Defense's "record keeping" and "internal controls" requirements, violated §§2903(c)(3) and 2903(d)(5)(B) of the Base Closure Act and constituted arbitrary and capricious agency action.

F. The Failure of the Defense Department to Publish a Summary of the Selection Process

32. The failure of the Department of Defense to publish in the Federal Register and transmit to the Congressional defense committees and to the Commission a summary of the selection process that resulted in the recommendation for closure for each installation, together with a justification for each recommendation, violated §§2903(c) (1) and (2) of the Base Closure Act and constituted arbitrary and capricious agency action.

G. Failure of the Navy to Follow the Defense Department's Regulations

33. The Defense Department's "policy guidance" and "record keeping" requirement directive to the Military Departments promulgated on December 10, 1990 and the "internal controls" directive promulgated on February 13, 1991 were the equivalent of regulations for purposes of review under the Administrative Procedure Act. *See Lucas v. Hodges*, 730 F.2d 1493, 15047 n. 20 (D.C. Cir. 1984), *vacated on other grounds*, 738 F.2d 1392 (1984).

34. The failure of the Navy to follow the Defense Department regulations by failing to implement an "internal control plan" in order to ensure an accurate and fair decision-making process, failing to ensure the accuracy of its data collection and analysis, and failing to prepare minutes of its deliberations on closures and realignments, constituted arbitrary and capricious agency action and was not in accordance with law. *See, Bodie v. Dept. of Navy*, 827 F.2d 1578, 1580 (Fed. Cir. 1987); *Wojciechowicz v. Dept. of Army*, 763 F.2d 149, 153 (3d Cir. 1985).

35. The Navy's failure to consider all installations "on an equal footing" violated the Defense Department's December 10, 1991 regulations, constituted arbitrary and capricious agency action and was not in accordance with law.

36. OPNAVINST 3050.22 expressed a Navy policy requirement that there be two Naval shipyards on each coast with drydock capability for large conventional aircraft carriers.

37. The Navy's departure from, and violation of, OPNAVINST 3030.22, without announcing that departure or the reasons supporting it, constituted arbitrary and capricious agency action. *See Donovan v. Adams Steel Erection, Inc.*, 766 F.2d 804, 807 (3d Cir. 1985).

H. The Navy's Failure To Adopt or Follow a Proper Force Structure Plan

The Navy's failure to adopt a force structure plan in compliance with §2903(a) of the Base Closure Act violated §2903(a) and constituted arbitrary and capricious agency action.

39. The Navy's use of the three year period from 1998-2000 to justify excluding the six nuclear capable Naval Shipyards from base closure consideration under its "Step 5" procedure violated the six year 1992-1997 Force Structure Plan requirements and, therefore, §2903(a) of the Base Closure Act and constituted arbitrary and capricious agency action.

I. The Commission's Failure To Hold Meaningful Public Hearings and Meetings

40. The requirement of public hearings in the Base Closure Act entailed the right to meaningful hearings, necessitating that all data and information relevant to the proposed closure of the Shipyard be made available to interested parties in advance of the hearing. [10 U.S.C. 2903(c)(4)]; *see also National Wildlife Federation v. Marsh*, 568 F. Supp. 985, 994 (D.D.C. 1983); *Joseph v. Adams*, 467 F. Supp. 141, 160-61 (E.D. Mich. 1978).

41. By requesting and receiving additional documentation from the Navy relevant to the recommended closure of the Shipyard after the close of public hearings, which documentation was therefore not subject to public debate or GAO scrutiny, the Commission violated §2903(c)(4) of the Base Closure Act and its conduct constituted arbitrary and capricious agency action. *See National Wildlife Federation*, 568 F. Supp. at 994; *Joseph v. Adams*, 467 F. Supp. at 160-61.

42. By withholding documentation opposed to closure of the Shipyard and suppressing Vice Admiral Hekman's testimony in opposition to closure of the Shipyard, the Navy violated the requirement of, and right to, open public hearings relative to the closure of the Shipyard, 10 U.S.C. 2903(c)(4), and its conduct constituted arbitrary and capricious agency action.

43. The closed-door meetings between the Commission and the Navy held after the public hearings on the proposed closure of the Shipyard violated the Base Closure Act's requirement that "[e]ach meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public," constituted arbitrary and capricious agency action, and were beyond the scope of the Commission's statutory authority. [10 U.S.C. §2902(e)(2)(A)].

J. Defendants' Deprivation of Plaintiffs' Due Process Rights

44. Plaintiffs (a) Landry, (b) the International Federation of Professional and Technical Engineers, Local 3, (c) William F. Reil, (d) Metal Trades Council, Local 687 Machinists, (e) Ronald Warrington and (f) Planners Estimators Progressman & Schedulers Union, Local No. 2 (collectively the "Shipyard workers and unions"), possess a property right in maintaining their jobs until and unless it is determined through a procedurally correct process and fair application of the final criteria and Navy's Force Structure Plan that the Shipyard should be closed. *See Winsett v. McGinnes*, 617 F.2d 996, 1004-1008 (3d Cir. 1980), *cert. denied*, 449 U.S. 1093 (1980); *Three Rivers Cablevision v. City of Pittsburgh*, 502 F. Supp. 1118, 1130-1132 (W.D. Pa. 1980).

45. Defendants' actions constitute government action which has resulted in the deprivation of the property right possessed by plaintiff Shipyard workers and unions. *See, Three Rivers, supra.*

K. "Reasonable Probability of Success" Conclusion

46. Plaintiffs have a reasonable probability of success on the merits of Count I of the Verified Amended Complaint.

47. Plaintiffs have a reasonable probability of success on the merits of Count II of the Verified Amended Complaint.

48. Plaintiffs have a reasonable probability of success on the merits of Count III of the Verified Amended Complaint.

49. Defendants' violations of the Base Closure Act, arbitrary and capricious actions, and actions in excess of their statutory authority have actually prejudiced substantial rights and interests of plaintiffs.

50. Defendants' violations of the Base Closure Act, and the Navy's violations of the Defense Department's regulations, mandate

invalidation of the list of closures and realignments submitted to Congress and the President insofar as it relates to Naval installations. *See*, 5 U.S.C. §706; *Maxey v. Kadrovich*, 890 F.2d 73, 76 (8th Cir. 1989); *Acadian Gas Pipeline System v. F.E.R.C.*, 878 F.2d 865, 868 (5th Cir. 1989); *Esch v. Yeutter*, 876 F.2d 976 (D.C. Cir. 1989).

L. Irreparable Harm and the Public Interest

51. Plaintiff Shipyard workers and unions will suffer irreparable injury in the loss of their jobs by virtue of the unwarranted closure of the Shipyard resulting from defendants' violations of the Base Closure Act and the Defense Department's regulations, and defendants' arbitrary and capricious agency actions, and actions beyond their statutory authority.

52. The unwarranted closure of the Shipyard will cause substantial economic injury to the Philadelphia area, including the affected areas in the States of Pennsylvania, New Jersey and Delaware, which injury will be irreversible and irreparable.

53. The Navy's actions in redirecting workload to other shipyards, failing to award bids for work to the Shipyard on arbitrary grounds, and attempting to reassign the USS Kennedy overhaul to another shipyard, shows that the Shipyard is threatened with imminent closure if the injunctive relief sought by plaintiffs is not granted.

54. Plaintiffs have no adequate remedy at law.

55. The harm plaintiff Shipyard workers and unions will suffer in the absence of the entry of the preliminary injunctive relief outweighs the harm which defendants will suffer if such relief is granted.

56. The granting of the preliminary injunctive relief sought by plaintiffs is in the public interest.

57. Plaintiffs are entitled to the preliminary injunctive relief they seek based on the evidence establishing (a) defendants' violations of the Base Closure Act, the Defense Department's own regulations and the Due Process Clause of the Fifth Amendment, (b) defendants' arbitrary and capricious actions, and (c) defendants' actions exceeding their statutory authority.

Respectfully submitted,

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AND

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AND

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AND

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Attorneys for the State of New Jersey, Governor James J. Florio and Robert J. Del Tufo.

Charisse Lillie, Solicitor for the City of Philadelphia, Room 1520, Municipal Services Building, Philadelphia, PA 19102-1692.

Attorneys for the City of Philadelphia.

Dated: October 11, 1991.

CERTIFICATE OF SERVICE

I, Camille J. Wolf hereby certify that on this 11th day of October, 1991, I caused a true and correct copy of Plaintiffs' Proposed Findings of Fact and Conclusions of Law and Appendices in Support Thereof to be hand delivered on the following counsel of record: David F. McComb, Assistant United States Attorney for the Eastern District of Pennsylvania, 3310 U.S. Courthouse, Independence Mall West, 601 Market Street, Philadelphia, Pennsylvania, 19106; and hand delivered to Mark W. Batten, Trial Attorney, U.S. Department of Justice, Civil Division.

CAMILLE J. WOLF.

Mr. SPECTER. Mr. President, in mid-May of this year I decided to file a lawsuit against the U.S. Navy and the Base Closure Commission for violating numerous requirements of the Base Closure and Realignment Act of 1990. The lawsuit was joined by Senator WOFFORD, Senator BRADLEY, Senator LAUTENBERG, Congressman ANDREWS, Congressman WELDON, Congressman FOGLIETTA, the Commonwealth of Pennsylvania, and the States of New Jersey and Delaware among others. In the intervening months we won a motion for a hearing on a preliminary injunction and were granted expedited discovery. Through this process we have uncovered thousands of Navy documents that had been withheld from the Congress during the base closure review process. We also compiled thousands of pages of testimony from Navy and Base Closure Commission officials. This overwhelming amount of evidence paints a chilling picture of how the Navy and the Base Closure Commission deliberately ignored and manipulated the requirements of the Base Closure Act to achieve their own narrowly defined objectives.

Mr. President, since the outset of the base closure review process, I have acknowledged that the number of military facilities in the United States must be reduced. While this is no doubt a painful process, consolidation is necessary in order to balance our limited defense resources with our current strategic objectives. It simply makes no sense to maintain the number of bases and shore facilities to support a 600-ship Navy, when the Navy is being scaled back to 420 ships. Moreover, the diminished Soviet threat and the premium now being placed on rapid deployment forces allows us increased warning time to reconstitute our forces for a major wartime scenario if they are required.

In deciding which bases should be realigned or closed, I have always believed that the emphasis should be placed on ensuring a fair and objective evaluation of all facilities so that we can determine which facilities must be retained in order to meet our security needs by the most cost-effective means possible. Indeed, the base closure process was designed in large part to provide for such an objective evaluation. Unfortunately, the Navy's conduct has demonstrated to us clearly that there are certain institutions whose policy agenda cannot survive the scrutiny afforded by an objective evaluation of their operations. I maintain that it is because of their narrowly conceived bureaucratic agenda that the Navy decided to deliberately flout the intent of Congress and refuse to comply with the requirements of the 1990 Base Closure and Realignment Act.

Our delegation's objective from the beginning of the 1990 base closure process was to make sure that the Base Closure Commission and the Navy had the benefit of the most reliable information available on the operation of the Philadelphia Naval Shipyard. By taking this approach, after the review was complete and the Base Closure Commission had made its recommendations, I anticipated being able to report to my constituents that win or lose the process was fair. As the Commission moved toward completion of its work in late May and June of this year, however, it became clear to me that the process was neither fair nor objective. To the contrary, in violation of the Base Closure Law the Navy had preselected bases for closure and then carefully constructed a sham review process to, on the surface, maintain the appearance of compliance with the law. In order to redress this injustice, I determined that the only plausible course of action would be to file suit against the Navy.

This lawsuit has laid bare a pattern of deceit, obfuscation, and blatant disrespect for the law on the part of the U.S. Navy which I believe is unprecedented in the history of our defense forces. The Navy and the Base Closure Commission, in arriving at their decision to recommend closure of the Philadelphia Naval Shipyard, violated the Base Closure Act in several material respects. The Delegations' "Proposed Findings of Fact and Conclusions of Law" details a number of violations. Some of the most egregious violations are as follows:

First, the Navy did not consider all shipyards equally without regard to prior consideration of proposals to close, the Philadelphia Shipyard.

Second, the Navy's determination to close the Philadelphia Shipyard was based on an ultra vires criterion outside the final criteria promulgated by the Defense Department pursuant to the Base Closure Act.

Third, the Navy's determination to close the Philadelphia Shipyard was based on its allegedly perceived force structure needs beyond the 6-year period mandated by the Base Closure Act.

Fourth, the GAO reported on May 15, 1991 that it was unable to perform its statutory functions with respect to the

Navy's base closure process and decisions because the Navy (i) stonewalled the GAO's efforts to monitor the Navy's base closure process as it occurred, (ii) employed a subjective process devoid of supporting documentation and (iii) refused to institute an internal control plan with respect to its process and decisions in violation of a Defense Department Directive.

Fifth, the Navy's process was not fair because (i) it was not equal but instead predetermined by prior proposals and recommendations, (ii) it was subjective, (iii) critical Navy documents were withheld from the Commission's public hearing and scrutiny process and (iv) Admiral Peter Hekman, the Navy officer most knowledgeable in the operations of Naval shipyards, was discouraged by the Navy from providing critical Navy testimony during the Commission's public hearings.

Sixth, all meetings of the Commission were not open to the public since the Commission directed its staff to hold private meetings with the Navy's Base Structure Committee in a private effort to cure the deficiencies publicly found by the GAO in the Navy's base closure process and decisions.

Seventh, the Commission withheld critical Navy documents, obtained after the last public hearing on the Philadelphia Shipyard, from its own public hearing and scrutiny process.

Eighth, the Navy concealed from the Commission all documents opposing closure of the Philadelphia Shipyard. Members of the plaintiff congressional delegation inadvertently discovered several of these critical documents; however, the Commission held no hearings to publicly scrutinize these documents or to ascertain the existence of other concealed Navy documents.

Mr. President, I ask unanimous consent that the full text of our "Proposed Findings of Fact and Conclusions of Law" be submitted in its entirety into the RECORD. These findings reference a number of documents and depositions submitted as evidence in our lawsuit. While I do not expect my colleagues to review all of this material, I think anyone can see, even from a cursory review, that the evidence strongly supports the conclusion the Navy and the Base Closure Commission violated the Base Closure and Realignment Act of 1990. I will also insert into the RECORD at a later date key portions of the testimony referenced in the "Proposed Findings of Fact."

Mr. President, the allegations my colleagues and I have made are extremely serious and should not be taken lightly. Unless we are confident that the Navy's base closure recommendations reflect compliance with the base closure law and that they were conceived with the principal objective of meeting our evolving defense requirements, then we would be setting a dangerous precedent if we ignored evidence that the Navy has violated the base closure law. The simple fact is that in recommending the Philadelphia Naval Yard for closure the Navy was seeking to eliminate its most cost-effective facility for servicing conventional ships, which presently comprise over 95 percent of the surface fleet. Without Philadelphia, the Navy will be forced to service almost all of its conventional ships at nuclear yards where the cost of work would be priced using a considerably higher nuclear overhead rate. The long-term cost to the taxpayer will be billions of dollars. The Navy cannot provide any explanation for this massive projected cost overrun.

Mr. President, I believe that if we do not take corrective action at this juncture, we will soon be faced with a Navy infrastructure which is completely inappropriate for supporting our future naval forces.

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

The PRESIDING OFFICER (Mr. PELL). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KASTEN. 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. KASTEN. Mr. President, I ask unanimous consent to speak in morning business for 7 minutes.

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

Mr. KASTEN. I thank the Chair.

REPEAL OF THE 10 PERCENT EXCISE TAX ON BOATS

Mr. KASTEN. Mr. President, last week Congress finally approved the extension of unemployment benefits. These benefits are critical to those American workers who have suffered and lost their jobs due to this recession.

While the extension of unemployment benefits was a critical step to help those in need, American workers want Congress to address this recession with more than just unemployment checks. America's families want jobs.

One group of American workers are particularly desperate for Congress' help. These are America's boat builders and retailers.

While thousands of boat workers have already lost their jobs because of Congress' excise tax, the so-called luxury tax, thousands of jobs can be saved if Congress acts now to repeal the luxury tax.

This disastrous tax is anything but a luxury for the 19,000 middle-class boat workers who have lost their jobs this year because of it.

I voted against the tax 1 year ago when it was approved, and I have been pushing for its repeal for months.

But time is running out.

In addition to putting thousands of middle-class workers in the unemployment lines, the boat tax is forcing plant closures, it is aiding our foreign competitors by destroying one of America's finest manufacturing industries.

It is costing the Government far more in lost tax revenue and collection costs than it will raise.

This tax must go now. Every month Congress delays more workers lose their jobs.

During this past summer and fall there has been no shortage of evidence concerning the tremendous destruction that this tax has brought to the marine industry. Congress has heard testimony from unemployed boat workers, and from boat builders. Businesses have closed, the unemployment lines have grown longer, and still Congress has done nothing.

This inaction is no longer acceptable; Congress must act now.

If we fail to act before the recess begins, the earliest this tax will be repealed is next spring or maybe even early next summer. By then thousands more workers will have lost their jobs and an entire sector of America's marine industry will have been wiped out.

This tax is a nightmare for thousands of Americans, it was apparently not enough that 100,000 workers in the marine industry had already lost their jobs due to the economic slowdown in 1989 and 1990. Ignoring this, Congress imposed the 10-percent excise tax. This has been the last straw for many boat builders across this country and in Wisconsin and also many retailers.

Numbers just released by the National Marine Manufacturers Association show that 15,000 people were laid off last fall when dealer orders failed to materialize in anticipation of the luxury tax, and 4,307 people lost their jobs this past spring at just 66 boatbuilding facilities that were surveyed.

In fact, 37 percent of employees at both manufacturers and dealers have lost their jobs this year alone. The reason is clear, since the luxury tax was enacted there has been a 70-percent decline in sales of new boats over $100,000.

Because some politicians here in Washington were looking for ways to punish the rich, thousands of middle-class workers must now be told they have lost their jobs.

The irony is that this tax is not hurting the wealthy. They are simply buying other products. They are not buying those new boats. Workers are paying this tax, with their jobs.

Wisconsin is particularly hard hit by this tax. Two years ago over 18,000 people in our State were employed in the marine industry, and today that number is down to 15,000. Hundreds more will soon lose their jobs unless the boat tax is repealed.

In August, I visited a number of boat builders to see first hand the impact of

this tax. Cruisers Inc. in Oconto, Carver in Pulaski, Skipperliner in La Crosse have all been severely impacted by the tax. And it is not just those who work for these businesses that are hurt. The tax base of Oconto, Pulaski, and La Crosse, and other cities, is adversely impacted and dozens of businesses in these communities are suffering the ripple effect of job losses in the boat building plants. I just received word last week that Burger Boat in Manitowoc has closed down, and other companies in Wisconsin are in serious trouble due to this tax.

One company has told me flat out that their situation is so desperate that they will be forced to close in the next several months unless this tax is repealed now.

Another ironic aspect of the boat tax is that the Federal Government is losing millions of dollars because of it. A report put out in July by the minority staff of the Joint Economic Committee shows a minimum net loss to the Federal Government of $15.2 million in 1991, a net loss to Government, $15.2 million, in other words, increase in the deficit.

While the Joint Tax Committee has projected only $3 million in revenue from this tax, this figure includes no offset for the job loss that has resulted from the tax. Using an extremely conservative job loss number, the Government will lose $8 million in income tax receipts and $8.1 million in lost payroll tax receipts. The sum of $2.1 million in Federal unemployment payments will be paid out at cost to the Federal Government, at losses to the Federal Government, and increases to the deficit.

On top of all the suffering and job loss we have a tax that does not even raise money for the Government.

In September I chaired a hearing of the Small Business Committee to examine the impact of this tax on small businesses. Witnesses from both the manufacturing and retailing sectors testified to the job loss and devastation that this tax is bringing to the marine industry.

Particularly compelling was the testimony of Chet Markley, president of Local S 88 of the International Union of Shipbuilding Workers of America. Mr. Markley is one of the thousands of workers who has lost his job because of this tax. He stated clearly that the members of his union are the victims of this tax, not the wealthy.

I call upon all my colleagues to join me in working for the immediate repeal of this tax. This is one critical way we can help thousands of workers across America keep their jobs in the midst of this recession.

Each week we fail to act more workers will join the unemployment lines and more families will suffer.

Mr. President, I yield back the remainder of my time 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. LEVIN. 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. LEVIN. Mr. President, I ask unanimous consent that I be allowed to proceed as though in morning business for 5 minutes.

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

YUGOSLAVIA

Mr. LEVIN. Mr. President, the reports from Yugoslavia are appalling as Croatian cities and towns are being devastated by the Yugoslavian Federal Army. The world has stood by in horror as Dubrovnik, Vukovar, and other cities have been attacked, with many people killed and priceless cultural treasures threatened.

Mr. President, over 3 weeks ago the Senate passed Senate Resolution 210, in which the Senate urged the President to provide active leadership in encouraging the United Nations to promote and maintain a cease-fire in Yugoslavia. Three weeks of precious time. The time is past for any further delay. Senate Resolution 210 urged the President to support by any appropriate actions the resolutions of the Security Council—and this is the key language—including consideration of sending a U.N. peacekeeping force to Yugoslavia. The events of recent weeks virtually demand immediate United Nations intervention. If ever there was a situation needing U.N. intervention, and if ever there was a situation the founders of the United Nations envisioned as the purpose of the international body, this is it, right now in Yugoslavia. The Security Council should act immediately to stop the bloodshed and destruction, and the United States should do what is necessary and appropriate to see that it does. The President should act immediately, working to see the U.N. peacekeeping forces are sent to Yugoslavia.

A little over a week ago, the European Community placed economic sanctions on Yugoslavia, and the President announced that the United States would join the European Community in this effort. This is appropriate, if it is targeted properly at the right parties who are creating the problem, but it is not enough. The earlier-passed United Nations weapons embargo should be tightened, and a targeted complete oil cutoff should be implemented as part of any sanctions, but this, too, is not enough. Cyrus Vance has been working ceaselessly as the emissary of the U.N. Secretary General. But that, too, has proven not to be enough. What is needed is strong leadership at the United Nations to send peacekeeping forces to protect the boundaries of the component republics. If the United States or the European Community or the United Nations waits until the parties agree, they will possibly be waiting forever. The United Nations should decide what is right under international law and seek to implement it.

The Serbian Government has been rejecting for weeks peace plans offered by the European Community that have been accepted repeatedly by the other republics. During this time, by using the Serbian-dominated Federal Army, the Serbian Government has conquered about one-third of the territory of Croatia.

The United Nations, with full support by the United States, should support the sanctions, send in peacekeeping forces, and organize and mediate peace negotiations. The European Community plan of sovereign states loosely confederated is a reasonable basis for those negotiations. What will have to be abandoned is the Serbian Government's design for a greater Serbia.

Last week the Serbian-dominated Federal Army indicated is willingness to have U.N. peacekeeping forces in Croatia. Croatia has expressed its resistance to having its sovereign territory occupied by the Federal Army and having the presence of U.N. forces freezing in place an illegal occupation. But this is the sort of bitter and deadly disagreement that cannot be resolved until after the United Nations—with the full commitment of the international community—is present on the ground, at a place where the United Nations determines is appropriate by applying international law.

The parties are not going to be able to agree, apparently, as to where the appropriate place is for the United Nations forces to be located. So the United Nations, carrying out its own charter and its own historic purpose, should make the determination where its forces should go, applying international law, and seek to send those U.N. forces to those points.

The history of the people in the Balkans—Croatian, Serbian, Slovenian, Albanian, Hungarian, Macedonian, and many others—is complicated and difficult, and there have been tragic chapters in the history of each. Sadly and regrettably, each can point to a place and time where great wrongs, horrible events, were committed against them.

A demand of history is to never forget; but the lesson of history is to learn from the past, to grow, to establish peace, and to ensure that such horrors do not recur. To meet this obligation requires skill, tenacity, and wisdom.

Peace is possible. The wrongs of the past cannot be erased, but acknowledgement and reconciliation is possible. Through fair and impartial negotiations, the legitimate and peaceful interests of all parties can be met.

The only way that will happen is if the United Nations Security Council acts quickly to stop the bloodshed, begin the processes of negotiations, and authorize peacekeeping forces to go to Yugoslavia, to those places where those forces belong under international law as determined by the United Nations.

The President of the United States should lead the way.

Mr. President, the Senate has adopted a resolution already, 3 weeks ago, a resolution which I submitted with Senator LUGAR and Senator GORE, Senate Resolution 210. We have agreed to it. It urges the President to exercise the leadership at the United Nations which this situation now clearly requires.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

LEAVE OF ABSENCE

Mr. CONRAD Mr. President, I ask unanimous consent that I be granted leave by the Senate to be absent for the remainder of today's session.

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

Mr. CONRAD. Mr. President, there is a funeral that I feel I must attend and that is the reason for the absence. I thank the Chair and yield the floor.

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

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

VETERANS POST-TRAUMATIC STRESS DISORDER TREATMENT ACT

The Senate continued with the consideration of the bill.

Mr. SIMPSON. Mr. President, let me thank the managers of the bill for their extraordinary patience in meeting a situation of mine. I was speaking to a congressional wives group and it was a little longer than I had anticipated. I thank them for their courtesies.

May I inquire of the parliamentary situation? At 1:40, are we not to desist our activities?

The PRESIDING OFFICER. The Senator is correct.

Mr. SIMPSON. So we will go forward and at that point we will just simply move from this legislation into the business of the day under the previous order.

The PRESIDING OFFICER. The Senator is correct.

Mr. SIMPSON. I thank the Chair.

AMENDMENT NO. 1361

(Purpose: To provide for the indexation of cost-of-living adjustments in rates of certain compensation)

Mr. SIMPSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration. This is my final amendment of the day.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON] proposes an amendment numbered 1361.

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

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

The amendment is as follows:

On page 67, below line 14, insert the following new matter:

TITLE IV—MISCELLANEOUS

SEC. 401. INDEXATION OF COST-OF-LIVING ADJUSTMENTS IN RATES OF COMPENSATION.

(a) IN GENERAL.—Section 5312 is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

"(c)(1) Effective December 1 of each year, each rate of disability compensation under sections 1114 and 1115 of this title, dependency and indemnity compensation under sections 1311, 1313, and 1314 of this title, and the clothing allowance under section 1362 of this title shall be increased by the increase in the price index for the base quarter of such year from the price index for the base quarter of the immediately preceding year, adjusted to the nearest 1/10 of 1 percent. The price index for a base quarter shall be the arithmetical mean of such index for the three months comprising such quarter.

"(2) For the purpose of this section—

"(A) The term 'price index' means the Consumer Price Index—Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics; and

"(B) The term 'base quarter,' with respect to a calendar year, means the calendar quarter ending on September 30 of such year.".

(b) PUBLICATION REQUIREMENT.—Section 5312(d) (as redesignated by subsection (a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

"(2) Whenever disability compensation, dependency and indemnity compensation, and clothing allowance rates are increased under subsection (c), the Secretary shall publish the rates (as increased) in the Federal Register as soon after such increase as practicable.".

(c) ADMINISTRATIVE ADJUSTMENT.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

Mr. SIMPSON. Mr. President, this amendment provides legislation that I think would remedy a very disruptive situation which is faced by many disabled veterans and their survivors in this country today. I am joined in this effort by Senators on both sides of the aisle, and I appreciate that.

Last fall, the Congress failed to pass a cost-of-living allowance adjustment [COLA] for the veterans of the United States when the bill became absolutely loaded down with unnecessary costly and burdensome provisions; it became an absolute Christmas tree deluxe.

Several of us tried to resolve that situation, and we were poised to pass a bill that would have provided only for a cost-of-living adjustment, but that effort was stymied, totally stymied and stonewalled, by an objection in the House of Representatives. Propitiously then this year, we managed to pass a clean COLA bill, H.R. 1046, and the President has already signed that into law. I am relieved that we were able to avoid the debacle of past years regarding a COLA bill.

But I, like the cosponsors of this legislation, believe that veterans deserve to have their COLA without having to depend on Congress to pass separate legislation authorizing it in every year.

That is why I am offering this amendment today which would provide for an automatic cost-of-living adjustment for veterans who receive disability compensation and for their surviving spouses and children who receive dependency and indemnity compensation, DIC. It would also automatically increase the clothing allowance for those veterans who have service-connected disabilities that require them to use prosthetic devices that cause their clothing to wear out extraordinarily quickly.

Adoption of this amendment would assure that these veterans who have given so much for their country—and that is why we supported these people so remarkably throughout the decades—to assure that they would never ever have to again depend upon the political posturing of the Congress for their cost-of-living adjustment.

The veterans' cost-of-living adjustment has always been a very popular piece of legislation. Who could possibly argue that it is undeserved? Not one of us here. That is not the issue. It is clearly deserved. And that, therefore, makes it an extraordinarily attractive vehicle for all kinds and forms of legislation that cannot stand on their own merits or to which very valid objections should be raised.

Unfortunately, it has come to be regarded as an unstoppable freight train through this Chamber, decked out in holiday raiment of the most extraordinary nature with all kinds of provisions of questionable utility or value. But that unstoppable freight train was stopped last year, and the year before

that and the year before that, and the year before that, Mr. President. The Senate was never given the opportunity to vote on a bill that would have simply assured that disabled veterans and dependents received a cost-of-living adjustment. Rather, the veterans' COLA bill became entangled in a rear guard, tough, political fight on other issues and was not passed.

Consequently, the veterans had to wait until later in the year to realize their adjustments instead of receiving them at the first of the new year, just like Social Security recipients do and other recipients of Federal benefits that are tied to indexing.

I think, finally, veterans deserve peace of mind of knowing inflation is not going to eat up their benefits. COLA's are intended and designed to assure that those benefits keep pace with inflation. That is why we need an automatic COLA, as is the case with Social Security and a number of other Federal benefits.

By making the COLA automatic and removing it from the political arena altogether, veterans will then be guaranteed the COLA they deserve when it is due. They will not have to wait for months while we go back and clean up our activities.

Now, you will hear some rather extraordinary arguments from the negativists and the alarmists and also from some of the professional fundraising veterans' organizations. I use that term because some of them are very valid in the work they do and some are realy extraordinary in the fundraising activities that they do. You have only to ask for their records and books when you send in a contribution. They will furnish it. You be the judge as to how much you think those veterans receive and how much goes to the organization and the staff.

So I do make a differentiation between professional veterans' organizations and professional fundraising veterans' organizations.

As a matter of fact, you probably have already heard from some of them. In fact, they responded to my Dear Colleague letter regarding this issue much swifter than any of my colleagues. That is kind of an arrow in its flight as I discerned it and with more alacrity than any of my distinguished colleagues could have responded. It was almost instantaneous.

But the hype and the angst that are stirring their ranks is just not valid. What the professional fundraising veterans' organizations often fail to mention is the fact that 13 pieces of major legislation have been passed into law this year alone. It is an extraordinary record for our committee, of which the occupant of the chair is a member, a very fine participating member; 13 major pieces of legislation—count them—without being attached to any kind of a COLA bill. That is, 13 major pieces of legislation that have become law this year alone independent of a COLA bill, and that is the way to do the Nation's business.

Mr. President, in past years, it is these very same organizations that have written to you and to me and to all of us here on this floor and in the committee and asked us to "endorse the separation of the COLA from other contentious issues." The reason for that is so a timely, clean COLA could be passed.

That is exactly what this amendment would do, and it would make the COLA automatic also. I really do not understand what is so undesirable about that.

What the professional fundraising veterans' organizations really mean but will not say is that they do not want the COLA bill indexed to the Consumer Price Index and adjusted annually because that would take away from them one more vehicle on which to attach all sorts of leftovers. That is leftover legislation that they cannot pass up front or in a freestanding mode. That is what they want. That is exactly what they want and nothing more—another vehicle to just hang legislation on, and it is always the contentious legislation, usually having something to do with agent orange. What is more contentious than that? It usually has something to do with presumptive diseases. What is more contentious than that? There are 43 diseases in the statute books that state, "if you have a certain disease, even if it was 20 years back, it is presumed that you got the disease through military service." There is a tremendous cost on presumptive diseases!

We ought to really have a hearing on that one day. It would be stunning. I do not know if we will, but we ought to.

And so they wait for the great train to go through so they can hook this on the caboose or the mail hooks as it roars through the station.

Well, others, I think, in this situation have shared that. Certainly, the VA believes it is an amendment that should be considered. State groups, such as the Disabled American Veterans—I had a fascinating letter from the department of Rhode Island—they support this amendment 100 percent. That group said, "We have adopted a resolution * * * urging passage of a Senate bill * * * which calls for an automatic COLA for veterans compensation and dependents' indemnity compensation. We greatly appreciate the role you have played in sponsoring this important legislation. Your sensitivity to veterans issues is to be highly commended."

I appreciated that.

In another letter from the Americans for a Balanced Federal Budget Association, an association of more than 170,000, I am informed thusly: "We strongly support your Veterans' Compensation Indexing Act. We are committed to the principle that America must be generous in its compensation to those who became disabled, and to the survivors of those who lost their lives, when they answered their Nation's call.

"But we are concerned that annual COLA bills can too easily be used as legislative Christmas trees: A cost-of-living adjustment for disabled veterans and survivors of our war dead is so obviously appropriate and important that the bill providing it becomes sacrosanct, and ornaments hung on it can not be criticized except at great political risk." I can tell you about that.

Just the last two amendments are a great political risk. In paraphrasing the Americans for a Balanced Budget, let me make this as clear as I know how. If Congress decides that veterans' and survivors' benefits must be approved, then that is all well and good. But let those proposals be examined and judged based on their own merits, not tied to a political football that is shielded from any appropriate scrutiny because of the must-pass attitude regarding the entire bill.

It is always at the last. This baby only comes to us in extremity at the end. Do not let this stop. Veterans will not get their COLA. What does it have on it? Well, 10 other pieces of legislation. What are they? Well, they are all the 10 pieces of legislation we did not get out of committee when we had our meetings over the course of the year. That is what the 10 pieces of legislation are. What is it? I think it is time to deal with that.

So let those proposals be judged on their merits, not shielded from the pressures of the last hours. That is the way it always works.

I have had some interesting discussion with my colleagues on the floor, Democrat and Republican alike, and in those last hours. I will say you can pass that if you want. I know you are going to. In the House of Representatives they do not deal with things that way. They deal with it responsibly and up front. Do not hook it up, hang it on. And that is the way SONNY MONTGOMERY and BOB STUMP do their business over there with the Speaker assisting.

That is the way we should do our business here. That is a way to do our business.

In closing, let me just say this: No one, least of all me, or others who will speak on this issue, would wish to see the disabled veterans or their survivors have to do without their cost-of-living adjustment. That is not what we are talking about. They deserve one—I have always voted for it, for one—just as many Social Security recipients and others deserve one. The time has come for us to make their COLA automatic. Make it automatic, too, just as the Social Security COLA is automatic, so that these veterans never again have to

worry that they might not get their benefits—adjusted to account for inflation—because of political gimmickry.

We all know that Congress is going to continue to be very responsive to the needs of veterans, and that it does not need a COLA bill to do that. Clear evidence of that was presented again this past month when we passed a clean, timely COLA for the veterans of America; just what we ought to have done. And it is called, again as I say, a separate track. We have pursued this year passing these major pieces of veterans legislation. We do the Nation's business. We do it well for veterans.

Mr. President, I wish to correct my remarks in the RECORD with regard to the issue of presumptive diseases. Apparently those have burgeoned a great deal since I started and was chairman. There are now 84 presumptive diseases on the statute books. Hear that, because it means that even if it is a disease found in 80 percent, 60 percent, 100 percent of the rest of the American population, it is presumed that you contracted that disease because of military service.

That alone is a tremendous cost to the people of America. Perhaps it would be borne somewhere else in the health care system. I think that might be. Perhaps we ought to be looking into the use of Department of Defense facilities and veterans' facilities. But there is a great, great division there dealing with that issue. Yet we have beds that are unused in some of those facilities.

Now we have a health care situation in America which is costing us $700 billion a year. And still various reports assert that we do not furnish enough for veterans.

We will get to the bottom of those facts in that report. I will certainly want to be part of that issue because it goes with the litany that we somehow do not get the job done for veterans. That is how we come to these junctures in legislation. It does not come from anyone who does not care. People do care.

I admire the majority and the staff, very creative staff, as they put these bills together, but never tell us really how we are supposed to pay for it.

So, Mr. President, I pledge my efforts to secure passage of this provision to provide a veterans cost-of-living adjustment, a bill that is assured of rapid passage because it contains only a veterans cost-of-living adjustment and nothing else.

I ask for support of this amendment and trust that we will make the effort to assure that the COLA for veterans each year is automatic, and not subject to the pressures of those always pushing for left-over goods and left-over legislation in the frantic last hours of the session.

I thank the Presiding Officer.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I ask unanimous consent that the Senator from Vermont [Mr. LEAHY] be made a cosponsor.

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

Mr. DECONCINI. Mr. President, I am going to have some remarks on the amendment of the Senator from Wyoming. But before I do that, I yield to the distinguished Senator from Hawaii who has been here most of the morning waiting to discuss this particular amendment. I yield to the Senator whatever time he may need, although I understand we only have about 5 minutes before we have to break.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I thank the floor manager for yielding. I will ask for just about 3 minutes.

Mr. President, I oppose the amendment offered by my good friend, the Senator from Wyoming.

While it is true that this measure would guarantee that veterans and their survivors who receive disability compensation checks would receive automatic cost-of-living adjustments each year, it is also true that veterans as a whole would lose much more.

Mr. President, this amendment would strip us of a must-pass vehicle for enacting important new veterans legislation. Almost without exception, the major health and compensation initiatives Congress has adopted in the last 20 years have been enacted as part of a disability COLA bill. The reason is simple: Opponents of progressive legislation would have been buried under an avalanche of well-justified outrage if they had attempted to obstruct passage of such a bill.

Mr. President, we have seen such outrage demonstrated last year, when, for the first time, Congress failed to enact a disability COLA bill before the beginning of a calendar year. That unfortunate drama resulted in disabled veterans receiving their COLA adjustment 3 months late. Although the important agent orange provisions that had precipitated the COLA delay were ultimately enacted in modified form in separate legislation, no one can deny that their having been included as part of the original COLA bill was the deciding factor in their eventual adoption.

Mr. President, as the deficit continues to plague us, as the economy continues to decline under the administration's directionless policies, veterans programs stand in greater need of protection than ever before. We in the Senate must maintain whatever leverage we can in promoting the interests of our 27 million former servicepersons. In the face of a President who governs by rejection, who eagerly wields vetoes against civil rights, family planning, unemployment benefits, and family and medical leave bills, to name just a few, we cannot afford to give up the legitimate rights of the Senate majority to please those who oppose positive change in the veterans agenda.

Thank you, Mr. President. I hope that my colleagues will oppose this amendment. I also hope that our major veterans organizations, all of which oppose this amendment, will make it clear to their membership that this is not about whether veterans will receive their compensation COLA's—veterans have and will always receive an annual adjustment; rather, it is about whether the U.S. Senate will continue to be a progressive force in behalf of the Nation's veterans.

Thank you, Mr. President.

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

Mr. SPECTER. Will the Senator withhold?

Mr. DECONCINI. Yes.

Mr. SPECTER. Mr. President, I want to say at this point that we are scheduled to proceed with a live quorum call for another matter. That is why there are no additional speeches being made at this time, for those who may be watching on C-SPAN II. This issue will be taken up again at the conclusion of the proceedings, and there will be additional comments.

QUORUM CALL

Mr. DECONCINI. I think it is important to those who are listening in their offices that there will now be a live quorum.

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, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 3]

Akaka	Graham, Florida	Moynihan
DeConcini	Kennedy	Reid
Fowler	Kohl	Rudman
Garn	Lautenberg	Simpson

The PRESIDING OFFICER. A quorum is not present.

The majority leader is recognized.

Mr. MITCHELL. Mr. President, I move that the Sergeant at Arms be instructed to request the presence of absent Senators, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the majority leader.

The yeas and nays were ordered, and the Clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY],

the Senator from North Dakota [Mr. CONRAD], the Senator from Indiana [Mr. HARKIN], and the Senator from North Carolina [Mr. KERREY], are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota [Mr. CONRAD], would vote "aye."

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

The result was announced—yeas 94, nays 2, as follows:

{Rollcall Vote No. 258 Leg.}

YEAS—94

Adams	Fowler	Mitchell
Akaka	Garn	Moynihan
Baucus	Glenn	Murkowski
Bentsen	Gore	Nickles
Biden	Gorton	Nunn
Bingaman	Graham	Packwood
Bond	Gramm	Pell
Boren	Grassley	Pressler
Breaux	Hatch	Pryor
Brown	Hatfield	Reid
Bryan	Heflin	Riegle
Bumpers	Helms	Robb
Burdick	Hollings	Rockefeller
Burns	Inouye	Roth
Byrd	Jeffords	Rudman
Chafee	Johnston	Sanford
Coats	Kassebaum	Sarbanes
Cochran	Kasten	Sasser
Cohen	Kennedy	Seymour
Craig	Kerry	Shelby
Cranston	Kohl	Simon
D'Amato	Lautenberg	Simpson
Danforth	Leahy	Smith
Daschle	Levin	Specter
DeConcini	Lieberman	Stevens
Dixon	Lott	Thurmond
Dodd	Lugar	Warner
Dole	Mack	Wellstone
Domenici	McCain	Wirth
Durenberger	McConnell	Wofford
Exon	Metzenbaum	
Ford	Mikulski	

NAYS—2

Symms	Wallop

NOT VOTING—4

Bradley	Harkin	Kerrey
Conrad		

So the motion was agreed to.

The PRESIDING OFFICER. A quorum is present.

PRESENTATION OF THE FINAL REPORT OF THE SELECT COMMITTEE ON ETHICS INVESTIGATION OF SENATOR ALAN CRANSTON

The PRESIDENT pro tempore. The hour of 2 o'clock p.m. having arrived, under the order, the Senate will proceed to the presentation to the Senate of the final report of the Select Committee on Ethics on the investigation of Senator ALAN CRANSTON. The order provides that for this presentation there be 2 hours and 15 minutes equally divided and controlled between Senators HEFLIN and CRANSTON, or their designees, and that at the conclusion of the presentation the Senate will resume consideration of the pending business, which will be at that time S. 869. The order does not provide for the taking of any votes by the Senate.

It is the Chair's understanding that the Senator from Alabama [Mr. HEFLIN] who has continued to serve as chairman of the committee for the purpose of this investigation, will first address the Senate, to be followed by the Senator from New Hampshire [Mr. RUDMAN], the vice chairman of the committee. The chairman and the vice chairman of the committee intend to use no more than 1 hour, in total, for their initial presentation. The Senator from California [Mr. CRANSTON] or his designee, will then be recognized for the period under Senator CRANSTON's control. Finally, the chairman and/or the vice chairman of the committee may seek recognition for the purpose of making any response or rebuttal or reply for any amount of time that they have not utilized.

The majority leader is recognized.

PRIVILEGES OF THE FLOOR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the staff members and investigator of the Senate Select Committee on Ethics, members on the personal staff of the committee members, the Office of the Senate Legal Counsel, and staff and counsel for Senator CRANSTON, as listed on the document I now send to the desk, be granted the privileges of the floor during consideration of the resolution for committee action regarding the investigation of Senator ALAN CRANSTON.

The PRESIDENT pro tempore. Is there objection? The Chair hears no objection. The request is granted.

The names listed on the document follow:

Wilson Abney, Ruth Anderson, David Apol, Victor Baird, Robert S. Bennett, Karen Bovard, Anne Chamberlain, Alan M. Dershowitz, Mike Davidson, Murray Flander, Morgan Frankel, Houston Fuller, Annette Gillis, Stan Harris, Barbara Larkin, Felicia Lopez, Suzanne Martinez, John Monahan, Darryl Nirenberg, Julie Min, Marie Mullis, Thomas Polgar, Elizabeth Ryan, Jeannine Rennigner, Dalton Smith, Robert Stevenson.

The PRESIDENT pro tempore. The Chair should state that counsel or lawyers are not elected to the Senate and are not Senators and therefore they will not be granted the privilege to speak in the Chamber. Only Senators will be given the privilege to speak.

The Chair recognizes the Senator from Alabama [Mr. HEFLIN].

Mr. HEFLIN. Mr. President, the resolution of the Ethics Committee regarding Senator CRANSTON, which I will read into the permanent RECORD of the Senate, is the product of a long and arduous task. Members of the committee have struggled to reach a fair decision in a difficult situation. I believe the committee has achieved this goal with the following resolution, which I will read.

Whereas, the Senate Select Committee on Ethics has conducted a Preliminary Inquiry and Investigation into allegations of misconduct by Senator Alan Cranston, and has provided to Senator Cranston all the rights provided under Senate Resolution 338 (88th Congress, as amended) and the Committee's procedural rules;

It is therefore, resolved,

(1) CONTACTS WITH FEDERAL OFFICIALS REGARDING LINCOLN S&L

(a) That the Committee finds that Senator Alan Cranston, personally or through Senate staff, made the following contracts with federal officials regarding Lincoln Savings and Loan (Lincoln), a subsidiary of American Continental Corporation (ACC), a company associated with Mr. Charles H. Keating, Jr.:

(i) Prior to April 1987, Senator Cranston, along with other Senators and Members of Congress officially expressed opposition to or raised questions about the Federal Home Loan Bank Board's (FHLBB) adoption of a "Direct Investment Rule;"

(ii) On March 27, 1987, following a discussion with a Lincoln lobbyist, Senator Cranston's banking aide inserted material into the *Congressional Record* relating to "direct investments" by Savings and Loans, an issue of importance to Lincoln and many other Savings and Loan institutions;

(iii) On April 2, 1987, Senator Cranston attended a meeting with FHLBB Chairman Edwin J. Gray and Senators Dennis DeConcini, John Glenn, and John McCain to discuss the ongoing examination of Lincoln;

(iv) On April 9, 1987, Senator Cranston appeared for approximately one minute at a meeting suggested by Chairman Gray with four representatives of the San Francisco Federal Home Loan Bank (FHLB) and Senators DeConcini, Glenn, McCain, Donald Riegle to discuss the ongoing examination of Lincoln;

(v) In July or August of 1987, Senator Cranston called M. Danny Wall, then Chairman of the FHLBB, concerning Lincoln;

(vi) On November 12, 1987, Senator Cranston called Chairman Wall and discussed Lincoln's dispute with the San Francisco FHLB regulators;

(vii) On January 20, 1988, Senator Cranston called Chairman Wall and asked him to meet with Charles Keating;

(viii) On February 16, 1988, Senator Cranston called Chairman Wall and his notes indicate discussion of Lincoln;

(ix) On April 21, 1988, Senator Cranston called Chairman Wall to obtain a status report on Lincoln;

(x) On May 6, 1988, after receiving a telephone call from James Grogan, an ACC attorney, Senator Cranston's banking aide talked to FHLBB officials about the FHLBB proposed supervisory agreement with Lincoln;

(xi) On May 16, 1988, Senator Cranston met with Chairman Wall, and Lincoln was discussed;

(xii) On February 8 and 9, Senator Cranston called Chairman Wall and Federal Deposit Insurance Corporation Chairman L. William Seidman concerning the proposed sale of Lincoln and, on February 8, Senator Cranston's banking aide called on FHLBB official about Lincoln; and

(xiii) In early April 1989, Senator Cranston called all three members of the FHLBB concerning the proposed sale of Lincoln.

(b) The Committee also finds that Senator Cranston had substantial constituent interest in intervening with federal officials on behalf of Lincoln, including the facts that Lincoln employed hundreds of California residents and that thousands of California residents were Lincoln depositors and bond holders. The Committee also finds that Senator Cranston had information which reasonably caused concern about the regulation of Lincoln, including a letter from Jack D. Atchison with the accounting firm of Arthur Young and a report from Alan J. Greenspan relating to Lincoln.

(c) The Committee further finds that, when considered in and of themselves and without regard to any contribution or other benefit, none of Senator Cranston's aforementioned activities concerning Lincoln were illegal or improper and violated no law or Senate rule.

(2) SOLICITATIONS AND CONTRIBUTIONS

(a) The Committee finds that, prior to 1987:

(i) Mr. Keating, his associates, and friends contributed a total of $49,000 to Senator Cranston's 1984 Presidential Campaign and his 1986 Senatorial Campaign;

(ii) At Senator Cranston's request, Mr. Keating also caused a contribution of $85,000 to be made by ACC to the California Democratic Party get-out-the-vote campaign in the Fall of 1986; and

(iii) At the request of Senator Cranston's chief fund raiser, Lincoln also made a $300,000 line of credit available to Senator Cranston's campaign in the fall of 1986 on an expedited basis, although this line of credit was never used.

(b) The Committee also finds that, beginning in 1987, Senator Cranston solicited contributions from Mr. Keating for several voter registration organizations with which Senator Cranston was associated:

(i) after a solicitation by Senator Cranston in early 1987, America Votes received $100,000 from Lincoln on March 3, 1987;

(ii) the Senator solicited $250,000 for voter registration groups on September 24, 1987, and Keating affiliated companies contributed $225,000 to the Forum Institute (a 501(c)(3) tax-exempt organization) and $25,000 to USA Votes on November 6, 1987;

(iii) the Senator discussed the Center for Participation in Democracy (a 501(c)(3) tax-exempt organization) with Mr. Keating on January 8, 1988, and ACC donated $400,000 to the Center for Participation in Democracy and $100,000 to the Forum Institute on February 10, 1988; and

(iv) in early 1989, the Senator or his chief fund raiser discussed an additional voter registration contribution with either Keating or ACC attorney, James Grogan, but no further contributions were made to voter registration organizations.

(c) The Committee further finds that, in January 1989, ACC contributed $10,000 to the Committee for a Democratic Consensus, a PAC affiliated with Senator Cranston.

(d) Based on the available evidence, the Committee concludes that contributions to Senator Cranston's Presidential and Senate campaigns from Mr. Keating and his associates under the Federal Election Campaign Act were within the established legal limits, and were properly reported.

(e) The Committee also concludes, based on the available evidence, that Senator Cranston's solicitation or acceptance of contributions to state party organizations, political action committees, and voter registration organizations were, in and of themselves, not illegal or improper; nor did any such contribution constitute a personal gift to Senator Cranston.

(3) LINKAGE BETWEEN OFFICIAL ACTIONS AND CONTRIBUTIONS

The Committee finds that, in and of themselves, none of the foregoing actions of Senator Cranston violated any law or Senate Rule. The Committee further finds by clear and convincing evidence that, based upon the totality of the circumstances, Senator Cranston engaged in an impermissible pattern of conduct in which fund raising and official activities were substantially linked in connection with Mr. Keating and Lincoln.

(a) From early 1987 through April 1989, Senator Cranston personally or through Senate staff contacted the FHLBB on behalf of Lincoln during a period when he was soliciting and accepting substantial contributions from Mr. Keating or his affiliates, to wit:

(i) As a result of a solicitation from Senator Cranston in early 1987, Mr. Keating contributed $100,000 to America Votes on March 3, 1987, near the time when Senator Cranston participated in the April 2 and April 9, 1987 meetings with FHLBB Chairman Edwin J. Gray and the San Francisco regulators.

(ii) Before October 6, 1987, Senator Cranston solicited and received a commitment from Mr. Keating for contributions in the amount of $250,000 for two voter registration groups, which were delivered to the Senator personally by Mr. Keating's employee James Grogan on November 6, 1987. When the contributions were delivered, Mr. Grogan and Senator Cranston called Mr. Keating, who asked if the Senator would contact new FHLBB Chairman M. Danny Wall about Lincoln. Senator Cranston agreed to do so, and made the call six days later.

(iii) In January 1988, Mr. Keating offered to make an additional contribution to voter registration groups affiliated with Senator Cranston and asked Senator Cranston to set up a meeting for him with Chairman Wall. Senator Cranston did so on January 20, 1988. On February 10, 1988 Senator Cranston received checks totaling $500,000 for voter registration groups.

(iv) In early 1989, at the time that Senator Cranston was contacting Bank Board officials about the sale of Lincoln, either he or his chief fund raiser discussed another contribution from Keating or his associates. However, no further contribution was ever made.

(b) Senator Cranston's Senate office practices further evidenced an impermissible pattern of conduct in which fund raising and official activities were substantially linked, in that, with his knowledge, permission, at his direction, or under his supervision, Senator Cranston's fund raiser (who was not a Senate employee):

(i) assisted in scheduling and attended meetings in the Senator's Senate office between the Senator and contributors about legislative or regulatory issues;

(ii) served as an intermediary for Mr. Keating or Mr. Grogan when they could not reach the Senator or his banking aide; and

(iii) evidenced, through written memoranda addressed to Senator Cranston, an incorrect understanding that contributors may be entitled to special attention and special access to official services. The incorrect understanding was never corrected by the Senator.

Be it further resolved that the Committee finds:

(1) That in connection with his conduct relating to Charles H. Keating, Jr., and Lincoln Savings and Loan Association, Senator Alan Cranston of California engaged in an impermissible pattern of conduct in which fund raising and official activities were substantially linked, in that:

(a) From early 1987 through April 1989, Senator Cranston personally or through Senate staff contacted the Federal Home Loan Bank Board on behalf of Lincoln during a period when Senator Cranston, on behalf of organizations in whose success he had a deep concern, was soliciting and accepting substantial contributions from Mr. Keating; and

(b) Senator Crantson's Senate office practice further evidenced an impermissible pattern of conduct in which fund raising and official activities were substantially linked.

It is further resolved:

(1) That Senator Cranston's impermissible pattern of conduct violated established norms of behavior in the Senate, and was improper conduct that reflects upon the Senate, as contemplated in section 2(a)(1) of S. Res. 338, 88th Congress, as amended.

(2) That Senator Cranston's conduct was improper and repugnant.

(3) In reviewing the evidence available to it, the Committee finds that Senator Cranston:

—violated no law or specific Senate rule;

—acted without corrupt intent; and

—did not receive nor intend to receive personal financial benefit from any of the funds raised through Mr. Keating;

(4) Further, the Committee finds that extenuating circumstances exist including the following:

(a) That Senator Cranston is in poor health (which finding is based on expert and competent medical opinion after an extensive medical investigation); and

(b) That Senator Cranston has announced his intention not to seek reelection to the Senate.

(5) Senator Cranston's improper conduct deserves the fullest, strongest, and most severe sanction which the Committee has the authority to impose.

Therefore, the Senate Select Committee on Ethics, on behalf of and in the name of the United States Senate, does hereby strongly and severely reprimand Senator Alan Cranston.

There has been filed with the Secretary of the Senate a copy of the resolution that I have just read, a copy of the committee's final report, and a separate volume containing Senator HELMS' additional views.

In connection with his dealings with Charles Keating and Lincoln Savings and Loan, a failed California S&L, Senator CRANSTON has been strongly and severely reprimanded by the Ethics Committee for improper conduct which reflects upon the Senate. The reprimand did not come because Senator CRANSTON violated any law, nor because he violated any specific Senate rule. The committee has found that he violated neither. Rather, the reprimand came as a result of "a pattern of conduct in which fundraising and official activities were substantially linked."

I want to focus for a moment on the committee's finding that there was substantial linkage between Senator CRANSTON'S fundraising and his official duties, as it related to Mr. Keating and Lincoln Savings and Loan. At least two aspects of the committee's reprimand deserve discussion.

First, a threshold matter. If, in all of his actions, Senator CRANSTON violated no law and violated no specific Senate rule, why is he, nevertheless, being reprimanded by the Ethics Committee? As amended, Senate Resolution 338 of the 88th Congress authorizes the Ethics Committee to receive complaints and investigate allegations of violations of law, violations of the Senate Code of Official Conduct, violations of rules and regulations of the Senate, and "improper conduct that reflects upon the Senate," and to make appropriate find-

ings of fact and conclusions with respect thereto.

As written, codes of conduct have been adopted by the Senate, there has been a recognition that the new rules did not, in the words of Senator John Stennis, "replace that great body of unwritten but generally accepted standards that will, of course, continue in effect."

The path to judgment is easy when a specific law or rule has been violated. But, for those who believe in the rule of law, violations of unwritten ethical standards are far more difficult to resolve. Although a finding of "improper conduct that reflects upon the Senate" is subjective in nature, it must ultimately rest upon a violation of an existing and well understood norm of behavior. Before making such a finding, Senate practices and customs and their interrelationships must be carefully evaluated.

In reprimanding Senator CRANSTON, unwritten but commonly understood standards of Senate behavior were relied upon by the committee—in the same way that those standards have historically been relied upon by the full Senate in disciplinary cases occurring before as well as after the adoption of written codes of conduct in the Senate. Thus, Senate precedent is clear. A Senator may be disciplined for improper conduct which violates unwritten but well established norms of Senate behavior, even though the Senator's actions violate no specific law or Senate rule. This has always been and must continue to be the case, if we are to protect the public's trust in the integrity of the Senate.

This brings me to a second aspect of the committee's resolution which I want to discuss. When is the well established Senate norm applicable to the facts of this case, and how did the committee determine that Senator CRANSTON violated that norm.

In determining that a well understood but unwritten standard of Senate behavior applies to a specific case, the committee looks to and is guided by relevant statutes, rules, rulings, and resolutions, the common and individual experiences of Senators, and the history of Senate disciplinary cases.

In this case, having evaluated these sources in light of our own experience as Senators, members of the committee unanimously concluded that commonly understood and well established norms of behavior in the Senate do not permit linkage between official actions and fundraising. The committee also determined that Senator CRANSTON'S conduct substantially linked his official actions and his fundraising, in violation of this established Senate norm. How did the committee arrive at the conclusion that such linkage existed?

The fact that two events occur at or near the same point in time may be an important fact in deciding whether the events are impermissibly connected. In and of itself, however, this coincidence of timing does not mean that the events are linked. On the other hand, to find linkage, it is not necessary that one of the events directly or indirectly caused the other. And certainly, fundraising and official actions may be impermissibly linked although the Member did not intend them to be.

Also, such linkage is improper, even though the official actions involved may not, in and of themselves, be detrimental to the public interest. For example, in the case of Lincoln Savings and Loan, the committee found that the evidence clearly showed that the contacts by the five Senators' with Federal regulators regarding Lincoln did not cause the eventual failure of Lincoln or the thrift industry in general, and that the evidence did not establish that their contacts affected the regulators' treatment of Lincoln. Nevertheless, the linkage between Senator CRANSTON'S official actions and his fundraising was improper.

Senator Paul Douglas, whose writings on Government ethics may not have been familiar to Senators prior to the public hearings in this case, offered advice in this area. Although his writings are not binding upon Senators, they provide some guidance. Of the connection between contributions and official actions on behalf of contributors, He said:

> [T]he possibility of * * * a contribution should never be suggested by the legislator or his staff at the time the favor is done. Furthermore, a decent interval of time should be allowed to lapse so that neither party will feel that there is a close connection between the two acts. Finally, not the slightest pressure should be put upon the recipients of the favors in regard to the campaign.

I am reminded of the well-known words of Supreme Court Justice Potter Stewart when he wrote about the meaning of obscenity. The Justice noted that although he was not able to define obscenity with specificity, he knew it when he saw it. In my view, Justice Stewart's statement is a frank recognition that not all standards offer the opportunity to arrive at easy judgments through the mechanical application of a fixed formula. Recognition that a standard may not be easy to apply, however, does not mean that it does not exist or that it is not sound, nor does it imply that the standard cannot be reasonably applied.

As in all cases of this nature, the committee's decision in Senator CRANSTON'S case was based upon the totality of the circumstances, and it was from this totality that the committee determined that Senator CRANSTON engaged in an impermissible pattern of conduct in which fundraising and official activities were substantially linked. The pattern which the committee found so disturbing was unequivocally manifest through a series of activities and occurrences involving Senator CRANSTON over a period of at least 2 years. Some of the actions which created the linkage were taken by Senator CRANSTON personally, some by his staff, who often acted with his knowledge or permission and often under his direction or supervision.

Some of the occurrences which led the committee to conclude that substantial linkage existed between Senator CRANSTON'S fundraising and his official activities were included in the committee's resolution, and I will not repeat them all. On their face, some acts or occurrences were obviously more troubling than others. One notable example is the incident in November 1987, where delivery of $250,000 in contributions from Charles Keating for voter registration groups took place at the same meeting in the Capitol where the Senator agreed to contact a regulator on Keating's behalf. The committee has not found that the events were causally connected, but the incident does indicate linkage.

But the committee's decision was not based upon any single action or event standing alone. Woven together over time, however, Senator CRANSTON'S actions and the actions of others who acted with his knowledge or permission, or at his direction, created an unmistakable pattern in which the Senator's official actions were intertwined with his fundraising activities. None of the acts violated any law or specific Senate rule. However, in combination these actions violated accepted Senate standards which do not permit official actions to be linked with fundraising.

Also, most of the money raised by Senator CRANSTON in this case was contributed to 501(C)(3) organizations, which are listed as charitable organizations. Although this case has made painfully obvious the urgent need for comprehensive campaign finance reform, we must remember that the Senate prohibition against linking fundraising and official duties applies to charitable as well as campaign contributions.

While this committee has said that a Senator must be mindful of the appearance that may be created by his or her conduct and take special care to try to avoid harm to the public trust, the committee's strong and severe reprimand of Senator CRANSTON, like discipline administered by the Senate in prior cases, is based upon the Senator's improper conduct. Senator CRANSTON'S improper conduct also appeared to be improper, but it was his improper conduct, and not the appearance of impropriety, that caused the committee's reprimand.

For most of us, Senator CRANSTON had been in the Senate for many years when we were first elected. Seventy-seven years old, he has announced that he will not seek reelection to the U.S. Senate.

As you probably know, Senator CRANSTON began a course of treatment for prostate cancer around the time that the committee's public hearings began in this matter. The hearing record reflects that at the time of the hearings, which ended in mid-January of this year, the doctor-patient privilege was waived by Senator CRANSTON, and the committee was well informed of the severity of Senator CRANSTON's condition by an eminent radiation oncology specialist located at Stanford University.

The committee has now found in its resolution of reprimand that Senator CRANSTON is in poor health. This finding is based upon expert and competent medical opinion, after an extensive medical investigation. Recently, Senator CRANSTON again waived his doctor-patient relation privilege, and Vice Chairman RUDMAN and I conducted a 1-hour interview of the Senator's medical specialist.

Subsequent to the interview, the specialist provided additional information on the state of Senator CRANSTON's health and the prognosis for his future. Members of the committee considered the state of Senator CRANSTON's health and the fact that he will not seek reelection to the Senate in reaching a conclusion as to the appropriate sanction in this case. For some members of the committee, his age was also considered, as well as his remarkable record of service to this Nation over the last 23 years.

Having taken these extenuating circumstances into account, the committee determined that it was appropriate to issue a most severe sanction which could be imposed by the committee.

Senate Resolution 338, of the 88th Congress, and the Committee Rules of Procedure provide that impending matters such as the investigation of Senator CRANSTON may be concluded through a remedy proposed by the committee only if the respondent agrees to the proposed remedy.

In the case of Senator CRANSTON, the committee proposed and the Senator accepted the committee's proposal to conclude its investigation of his conduct by having the committee adopt a resolution which strongly and severely reprimands him, and by presenting its report to the Senate as required by the Senate rules.

The letter of proposal and the acceptance reads as follows. It is addressed to Senator CRANSTON.

DEAR SENATOR CRANSTON: The committee proposes to conclude its investigation of your conduct with respect to Charles H. Keating, Jr. and Lincoln Savings and Loan by adopting the attached resolution—

That being the resolution that I have read—

and presenting a report to the Senate as required by the committee rules of procedure.

Under the committee rules of procedure, your acceptance of this proposal is required before it can be effectuated. If you accept this proposal, please sign below.

Signed by HOWELL HEFLIN, chairman; WARREN B. RUDMAN, vice chairman; and then it has:

I accept the committee's proposed remedy.
Senator ALAN CRANSTON.

The committee concluded that under the circumstances of this case, it was appropriate to make this formal presentation of its resolution and report to the Senate.

Mr. President, I yield the floor to Senator RUDMAN.

The President pro tempore. Under the order, the senior Senator from New Hampshire [Mr. RUDMAN] is recognized.

Mr. RUDMAN. Mr. President, let me start on a personal note. I have served on this committee as chairman and as vice chairman, for some years. This is Senator HEFLIN's last appearance for the committee. I thank him for his unfailing courtesy.

I thank Senator LOTT, Senator HELMS, Senator SANFORD, and in particular, Senator PRYOR. I want to say on this floor that had not Senator PRYOR volunteered to come back on the committee after suffering a serious illness and subjected himself to further strain and stress in order to serve this institution, it is my sense we would not be here today. For that service to the institution, I know that all of our colleagues join in my thanks to him.

Mr. President, it gives me no pleasure to rise today to report on the investigation of the Senate Select Committee on Ethics into the conduct of the senior Senator from California [Mr. CRANSTON]. This has, for a variety of reasons, been a long and difficult inquiry, and it is never an enjoyable task to report on the failings of one of our colleagues.

At the outset, Mr. President, I would like to discuss what this case is not about. It is not about the merits or wisdom of Senator CRANSTON's intervention on behalf of Lincoln Savings and Loan Association. The merits of a policy pursued by a Senator is between the Senator, his constituents, and the American people. It is not a matter for the Ethics Committee.

The case before the committee was also not about the merits of the existing system for financing congressional campaigns. The committee, when judging the conduct of Senators, is no different than a judge and jury in a court of law. We must deal with the hand that is dealt us, the laws and standards in force at the time. We cannot pass judgment based on the laws and rules that some might like to see.

Finally, this case is not about the propriety of assisting a person who happens to have been a campaign contributor or political supporter. It is a routine, proper, and necessary function of a Senator to make inquiries of agencies on behalf of individuals, and to intervene when the Senator believes that justice or equity so requires. It would be ludicrous to create a rule on interventions which requires discrimination against political supporters and contributors. Parenthetically, I should note the obvious fact, one commonly overlooked, that there are many forms of political support which are more valuable than a $1,000 or $5,000 contribution—the maximum permitted for congressional campaigns under current Federal law.

In the final analysis, this case came down to one basic question. Was there impermissible linkage between a Senator's official actions and contributions in violation of Federal law, Senate rules, or standards of conduct governing all Members?

More than 2 years ago, the Ethics Committee received a complaint that five Senators, including Senator CRANSTON, took action on behalf of Lincoln Savings and Loan, either in exchange for or because of campaign and other contributions from Lincoln; American Continental Corp., Lincoln's parent company; officials of the two companies; Mr. Charles Keating, who owned ACC; and members of the Keating family.

The complainant further alleged that simply taking action on behalf of a contributor created an appearance of impropriety that required disciplinary action. The committee unequivocally rejects that portion of the complaint. As the committee's report notes on page 23, "constituent service, even on behalf of contributors, is a legitimate and appropriate senatorial function."

The Committee held 26 days of public hearings on these allegations between November 1990 and last January. The committee heard from 27 witnesses and received 17 depositions and 853 exhibits into evidence. One of the witnesses, Mr. James Grogan, Lincoln's lobbyist, received a grant of immunity pursuant to an agreement with the Department of Justice. The committee did not grant Mr. Keating or other Lincoln or ACC officials immunity because of concerns expressed by the Justice Department. The hearings were nationally televised, and the transcripts, depositions, and exhibits have already been published by the Senate.

On February 27, 1991, the committee concluded the cases with respect to four of the five Senators. While the Committee leveled certain criticisms with respect to the conduct of the four Senators, the committee concluded that the evidence before it did not establish any linkage between the four Senators' official actions and contributions received, and that there was no cause for institutional action against those Senators.

With respect to Senator CRANSTON, however, the Committee concluded that there might have been such a linkage, and launched an investigation. In layman's terms, an Ethics Commit-

tee investigation is analogous to the trial and jury deliberations in a court of law. Senator CRANSTON waived his right to further hearing on March 18. Committee deliberations on the case began following the submission of a final brief by Senator CRANSTON on April 22. Unfortunately, deliberations were delayed for 4½ months because of one Member's health problems and another Member's forced refusal due to a financial conflict of interest. Accordingly, the committee's consideration of the case began in earnest in mid-September.

The Federal bribery statute prohibits a Senator from taking action in exchange for a gift or contribution, irrespective of whether there is any personal benefit. The evidence before the committee does not establish that Senator CRANSTON acted in exchange for contributions. If it did, this committee would recommend expulsion as it did in another case 9 years ago.

Federal law also prohibits a Senator from taking action because of the receipt of a personal benefit. The committee concluded that Senator CRANSTON received no personal benefit. More generally, the committee found that Senator CRANSTON violated no specific law or existing Senator rule.

The question then facing us was as follows: Is there a further standard of conduct governing a Senator's action on behalf of individuals, and did Senator CRANSTON act improperly by violating that standard?

In the absence of a written Senate rule on the subject, the committee looked to a variety of sources. These included the experiences and practices of members of the committee; the testimony during our hearings of a number of current and former Senators; House Advisory Opinion No. 1, a ruling governing the House of Representatives which was issued by our counterpart committee in 1970; the writings of former Senator Paul Douglas of Illinois, and many other sources. About one-quarter of the Committee's report on this case is devoted to a discussion of the applicable standards, and I strongly—and I repeat, strongly—recommend that each Senator read that portion of the report very carefully.

The cardinal principle governing Senators relevant to today's action is that a Senator must make decisions on whether to intervene on behalf of an individual without regard to whether such individual has contributed, or promised to contribute, to the Senator's campaign or other causes in which he or she has an interest. In other words, official actions and contributions cannot be linked.

In this case, for reasons I will describe in more detail, the committee found, as our report states, that "Senator CRANSTON engaged in an impermissible pattern of conduct in which fundraising and official actions were substantially linked."

The committee did not reach this decision lightly. There was more to the linkage than simply coincidental timing between Senator CRANSTON's actions and contributions. Moreover—and I want to state this emphatically for my colleagues and others watching this proceeding—Senator CRANSTON is not being unfairly singled out for engaging in conduct routinely practiced by other Members of this body. His behavior significantly deviated from the norms governing this body and from principles Senators are expected to, and in my 11 years do in fact adhere to.

I now want to turn to some of the major events that caused the committee to reach its conclusion. I will not review the full body of evidence; the committee's report and the full evidentiary record is available.

First, on January 2, 1987, Ms. Joy Jacobson, Senator CRANSTON's chief fundraiser, wrote him a memo stating:

> Cases/Legislation: Now that we are back in the majority, there are a number of individuals who have been very helpful to you, who have cases or legislative matters pending with our office who will rightfully expect some kind of resolution.

With respect to Mr. Keating, the memo states:

> Is continuing to have problems with the Bank Board and Ed Gray. Jim Grogan and the company's chief legal counsel, Bob Kielty, are coming to see you on Friday at 1:00 p.m. to get your advice on how to handle the current problem.

The meeting did not actually occur until January 28, when Senator CRANSTON met with Mr. Keating and Mr. Grogan.

A second meeting occurred in late February or early March—we do not know exactly when, although there is a February 27 notation on Senator CRANSTON's calendar—at which Mr. Grogan asked the Senator to attend a meeting with Ed Gray. On February 24, Senator CRANSTON informed the director of America Votes, of which the Senator was cochairman, that he had secured a $100,000 commitment for the organization from Mr. Keating, and the contribution was made 7 days later. On April 2 and 9, Senator CRANSTON attended the now well-known meetings with Mr. Gray and the regulators. At the latter meeting, which was the substantive one, Senator CRANSTON attended only long enough to say that he "share[d] the concerns" of the other Senators.

There are several noteworthy points about these events. First, there is the view expressed in Ms. Jacobson's memo to Senator CRANSTON, that contributors rightfully expect assistance. While I know of cases where political supporters expect help, I have never heard a Senator, or a person working for a Senator, express the view that there is any legitimacy to such an expectation. It is true that Senator CRANSTON did not write this memo, but he also did not react to it. Yet, without exception, every Senator and staff person with whom I have discussed the memo, has stated that they would not think that way, have never written any such thing, have never received any such communication, and would be horrified if they did.

Senator CRANSTON's lack of reaction is compounded by the fact that he is the only Senator, among the five Senators whose conduct was reviewed, for whom there is no evidence that any effort was made, even at the staff level, to verify the allegations made by the Lincoln officials prior to attending the April meetings. Morever, Senator CRANSTON testified that his purpose for going to the meetings was not only to seek information, but to get the attention of the regulators. Why, I ask, is one trying to get the attention of the regulators if one has made no effort to inquire into the merits of the complaint of the constituent and the relative position of the regulators to that issue?

If this were an isolated incident, we might not be here today. But the pattern of linkage continued. The most disturbing example of linkage came later that year.

Second, in July or August of 1987, Senator CRANSTON called Mr. M. Danny Wall, the new Chairman of the Federal Home Loan Bank Board, to urge that a prompt decision be made on the Lincoln examination. Chairman Wall testified that the Senator did not state what the resolution ought to be. In early September, Chairman Wall agreed to postpone a scheduled field visit by the regulators to Lincoln, and consider the matter in Washington.

On September 6, Ms. Jacobson wrote a memo to Senator CRANSTON. It is in the RECORD. A press clipping about Chairman Wall's decision was attached, and the memo stated that his views "are obviously good news to Keating." She added, "You should ask Keating for $250,000." Here again, we have linkage.

On September 24, Mr. Keating met with Chairman Wall in the morning and Mr. CRANSTON later in the day. As a letter Senator CRANSTON wrote 2 weeks later shows, he and Mr. Keating discussed the morning meeting, and Senator CRANSTON requested and received a commitment for a $250,000 contribution to the voter registration organizations he supported.

On November 6, Mr. Grogan personally delivered $250,000 in checks to Senator CRANSTON.

During that meeting, Senator CRANSTON telephoned Mr. Keating and thanked him. Mr. Keating then proceeded to ask Senator CRANSTON to call Chairman Wall. The call was placed on November 12, 6 days later.

We have, in this episode, impermissible linkage in Ms. Jacobson's memo—for a second time—as well as in the September 24 meeting and the November 6 meeting and phone call.

Mr. Grogan, with regard to this and other dealings with Senator CRANSTON, testified as follows:

[w]e would have those substantive discussions, and after those substantive discussions, normally, as we were leaving, either Mr. Keating would say, is there any way I can help you, Senator? I appreciate our relationship. Or at times, Senator Cranston would say, could you help in this area, could you help raise money here, could you do that. After those kinds of meetings, Mr. Keating would follow up either with Joy Jacobson or with Senator Cranston. So there were meetings where substance and fundraising were discussed in the same meetings.

It is important to note, however, in fairness to Senator CRANSTON that Mr. Grogan, who was testifying under a grant of immunity and therefore had every reason to be truthful, flatly, and persuasively denied the existence of any indications of a quid pro quo, a necessary element to establish bribery.

He was asked,

Was there any suggestion, either by word or by body language, or by raised eyebrow, that Senator Cranston's interest in Lincoln Savings' problems was tied to Mr. Keating's support of the non-profit voter registration efforts?

His response was "Never."

Third, on January 8, 1988, Senator CRANSTON and his son ate dinner with Mr. Keating in Los Angeles. At that dinner, fundraising for the voter registration groups and Mr. Keating's problems with the Federal Home Loan Bank Board were both discussed. Either at that dinner, or shortly thereafter, the Senator was asked by Mr. Keating to arrange a meeting between him and Chairman Wall.

Senator CRANSTON called Chairman Wall on January 20 and made the request. Senator CRANSTON then called Mr. Keating and informed him that the request had been granted. The meeting was held on January 28. A few days later, Mr. Keating met with other Bank Board officials, a meeting that was held at the direction of Chairman Wall.

Senator CRANSTON and his son visited ACC headquarters on February 9 and 10, at which time Mr. Keating personally handed the Senator $500,000 in contributions. On February 16, the Senator again called Chairman Wall. Although the Senator has stated he believes this call did not relate to Lincoln, his notes of the call indicate that a draft memorandum of understanding that Lincoln provided to the Bank Board 4 days earlier was discussed. The pattern is clear and, unfortunately, repetitive.

Fourth, Senator CRANSTON, a member of his staff, Mr. Keating, and Mr. Grogan ate dinner together in Los Angeles on December 14, 1988. At that dinner, according to Mr. Grogan's sworn testimony, Senator CRANSTON, entering the room "came up and patted Mr. Keating on the back, and said, 'Ah, the mutual aid society.'" This comment is a most disturbing reflection of Senator CRANSTON's state of mind.

Mr. President, I have described the evidence that I believe the committee found most disturbing. There were other actions by Senator CRANSTON and his staff, and other contributions and promises thereof, all individually less significant, which I will not go into today. They are in the RECORD. For those, I refer my colleagues to the report on their desks and the RECORD we printed at the end of last winter.

These four incidents, in and of themselves, demonstrate that Senator CRANSTON impermissibly linked, through time and other circumstances, contributions and official actions.

That is a pattern of improper conduct which must be sanctioned by this institution, and it is why we are here on the floor of the Senate today.

My colleagues will note that I have not addressed either the merits of Senator CRANSTON's actions, nor their effect on the Federal Home Loan Bank Board. The reason is that the wisdom and effectiveness of a Senator's intervention on behalf of an individual is irrelevant as to whether that intervention was improperly linked to contributions. That a Senator's actions were incorrect on the merits or effectiveness, cannot be the basis for disciplinary action. Conversely, it is not a defense against improper linkage for the Senator to have been right, or for his efforts to have been ineffective.

Mr. President, the committee unanimously agreed that Senator CRANSTON's conduct was improper and required an institutional response. Some members of the committee, including this Senator, believed that Senator CRANSTON's conduct merited action by the full Senate.

The question then arose as to what response the Senate should take. The committee's debate over the last 2 months was not over whether to take action but over what action to take. There are indeed mitigating factors, most notably the lack of any personal benefit and of any significant direct benefit to Senator CRANSTON's campaigns for the Senate or for the Presidency.

I personally believe that the $49,000 contributed to those campaigns were not the major motivation for his actions; it was the $850,000 contributed to the voter registration groups, groups in which Senator CRANSTON had a profound and appropriate interest. He received no personal benefit from these groups, and the political benefits were tangential at best.

Moreover, regretfully, Senator CRANSTON is seriously ill, and he has announced that he is not running for reelection. It is a well established rule of law that, when an individual acts improperly, personal circumstances that arise following the conduct in question are irrelevant as to guilt. Courts, however, routinely and properly consider such circumstances during sentencing. So these are in fact relevant to the committee's actions.

The committee discussed the appropriate sanction at great length over the past 2 months. The resolution we bring before the Senate today is not a perfect result. It is, however, for this institution an acceptable result, and it is certainly better than no resolution at all.

I thank the Chair.

I yield the floor.

The PRESIDENT pro tempore. Before the Chair recognizes the Senator from California, Senator HEFLIN and Senator RUDMAN have a total of 11 minutes remaining.

Under the order the Chair recognizes Senator CRANSTON.

Mr. CRANSTON. Mr. President, I rise with deep remorse in my heart to accept the reprimand of the committee. I deeply regret the pain all this has caused my family, my friends, my supporters, my constituents.

I am proud of my 23-year record in the Senate; most of all, of my accomplishments in the cause of peace and for our Nation's veterans and their families and their survivors. I am proud of what I have accomplished for the environment—the protection I have won for so many of California's wild rivers, for so much of its wilderness and seascapes. I am proud of what I have accomplished for equal rights and equal opportunity and equal justice and for affordable housing and rapid transit.

I am not proud of this moment.

My intentions were proper in all I did—as were the intentions of the four other Senators who were involved, Senators GLENN, DECONCINI, MCCAIN, and RIEGLE. The committee acknowledges that. But, in retrospect I grant that I should not have solicited and received—even though it was on behalf of others—charitable donations close in time to official actions. That conduct came, in time, to reflect upon me and hence upon the Senate, this body that I love and revere, and for that I apologize.

So, yes, I accept the committee reprimand.

Let me make plain, however, that while I accept the ultimate conclusion of the committee, there is documentary and other irrebuttable evidence that contradicts some of the committee's specific findings.

Mr. President, I ask unanimous consent that two documents relevant to that point be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. CRANSTON. I ask that each and all who are interested, and particularly each of you, my colleagues, take a look at that documentation.

It deals with the four incidents that were referred to by Senator RUDMAN. I

believe it casts a different light upon them. And there are other details that have been dealt with by Senator HEFLIN, Senator RUDMAN, and the resolution which I think are not exactly accurate, but I do not propose to go into that sort of detail in my remarks now.

Mr. President, up to the very last moment of the committee's long, long deliberations—and they were very long—I considered waging an all-out battle against its verdict.

If the committee had called for any action by the full Senate against me, I would have fought it tooth and nail, with the help of the man who sits beside me, Prof. Alan Dershowitz, one of our Nation's leading defenders of human rights. Let me tell you why I would have done so.

First, I ask each of you, I ask everyone, to note that the committee found and acknowledged the following:

That nothing I did violated any law or specific Senate rule;

That I acted without corrupt intent;

That no evidence was presented to the committee, no evidence, that I ever agreed to help Charles Keating in return for a contribution;

That none of the contributions constituted a personal gift to me; and

That I did not receive or intend to receive any personal benefit from any of the funds I raised.

The committee found and acknowledged:

That all my actions regarding Lincoln Savings and Loan were legal and proper;

That I violated no law or Senate rule;

That the money I raised was legal, proper, and properly reported.

The committee found and acknowledged:

That I had substantial reasons relating to the jobs and financial security of thousands of my constituents for intervening with Federal officials on behalf of Lincoln;

That I had information which raised legitimate questions about the regulation of Lincoln.

Senator RUDMAN, I had that information before I attended those meetings. Lincoln was vouched for by two of the big eight accounting firms, Arthur Young and Arthur Anderson, and by Alan Greenspan, now Chairman of the Federal Reserve Board, a man with tremendous impact upon the economy of our entire Nation. Alan Greenspan told me that Lincoln was well managed and viable for the foreseeable future.

The committee found and acknowledged in its earlier February 27 resolution that my contacts and the contacts of the other so-called Keating Five Senators with regulators regarding Lincoln did not cause the eventual failure of Lincoln and did not cause the eventual failure of the thrift industry in general.

The committee found and acknowledged in its February 27 resolution that my attendance and the attendance of other Keating Five Senators at two meetings with the regulators violated no law or Senate rule. It was those two meetings, my colleagues, that started this prolonged and painful saga. Yet, the committee found and acknowledged that I attended one of those meetings for approximately 1 minute. The record shows that all I said at that meeting was that I shared the concerns of the other Senators.

The record shows that all I did at the other meeting was to ask why an audit of Lincoln was taking so long. It was the longest audit ever. The end apparently was never in sight. And the only other thing I did at that meeting was agree with Senator GLENN that if Mr. Keating had broken any law he should be prosecuted, but if he had not broken any law, the regulators should get off his back.

Thus, it is clear, Mr. President, my colleagues, whoever else is observing this, it is clear that I have not been reprimanded for doing anything improper for Mr. Keating.

I have been reprimanded because there was, or appeared to be, a proximity in time between legitimate charitable donations that I accepted—for bona fide charities—and legitimate official actions that I took. There has been no charge, no charge, that there was any other connection between the donations and the actions, and it has been acknowledged today on the floor that I did not take any action, there is no evidence that I did, because of any contribution.

The record is replete with evidence that there was no other connection of any sort. The record shows, too, that my official actions were not only proper but were de minimus in nature. They were all routine status inquiries or requests that somebody see somebody or requests that various proposed sales of Lincoln be carefully considered.

It is not unusual for me and for many of you to work with great diligence for constituents. Let me give you an example of another time I did so. Back in the seventies, another large corporation, Lockheed, was facing bankruptcy. The livelihoods of many thousands of my constituents and their families were at risk, as was the case with Lincoln. I devoted far more time and effort and made many more phone calls about Lockheed than I ever did about Lincoln as I successfully fought to obtain a Government-guaranteed loan for Lockheed. Lockheed was not a supporter of my campaign or causes. Lockheed had supported and raised money for my opponent in the previous election.

I sought the charitable donations in question because of my zeal in a cause that relates to the very foundation of our democracy: Voter participation. The deplorable decline in the number of citizens who vote puts the essence and vitality of our democracy at risk. My long and deep dedication to this cause stems from what I witnessed and lived under in Hitler's Germany, Mussolini's Italy, and in Communist countries—where citizen participation was forbidden.

My motives and my actions were well-intentioned and honest, but I recognize now that I failed to anticipate that raising these funds could be looked upon as improper. And that is what we are now talking about—appearances.

I failed in that respect for a couple of reasons.

First, most of the donations went for nationwide nonpartisan registration drives conducted by organizations which were approved by the IRS for tax deductibility and in which I had held no position and whose use of the money was not under any control.

Second, these donations were made after my 1986 reelection for registration drives conducted all across the country in 1987 and 1988. Obviously, they could not benefit my 1986 campaign.

In retrospect, nonetheless, I now realize that what I did looked improper.

But I differ, and I differ very, very deeply, with the committee's statement in the resolution that my conduct "violated established norms of behavior in the Senate." If I had chosen to fight, I would have challenged that statement even more forcefully than I now will.

There are no such established norms of behavior in the Senate. There is no precedent and there is no rule establishing that it is unethical for a Senator to engage in legitimate constituent service on behalf of a constituent, because it was close in time to a lawful contribution to the Senator's campaign or to a charity that the Senator supports.

In its consideration in this case, the committee acknowledges that it has referred to sources for ethical guidance which may be largely unknown. It also acknowledged that there were no written guidelines of the Senate in several relevant areas.

Justice Black once referred to a tyrant king who wrote his laws in a hand so fine and placed them so high and so far from view that his subjects could not read them. That is the essence of tyranny. The essence of due process is to have laws written in advance so all can know them.

I have stated repeatedly that my actions were not fundamentally different from the actions of many other Senators. My statements fell on deaf ears, perhaps because I was undergoing treatment for cancer and unable to present my case strongly at a crucial stage of the committee's proceedings.

Whatever the reason, I was left with no alternative except to see if I could prove that I am far from being the only

Senator to do what I have done. I found abundant evidence that I could do so. The evidence is available in various studies, reports, and documents—all in the public domain. I was prepared on the advice of Professor Dershowitz to demonstrate to the Senate and to the Nation, through example after example of comparable conduct, that my behavior did not violate established norms.

But instead of using examples, I will now simply summarize what I found.

At least two-thirds of my colleagues in the Senate are involved with charities or foundations. Some are institutions set up by a Senator or by his or her friends, admirers, and contributors which bear the Senator's name or advance causes related to the Senator's legislative efforts.

In many cases, the Senator raises funds for the institutions or permits others to raise the funds in his or her name. The contributors include a great many individuals and corporations that have a direct interest in matters before the Senate and Government agencies. More than a few of these contributors have benefited from actions taken by the Senator involved, sometimes close in time to a contribution.

Many of the contributions are immense—$750,000, one contribution; $500,000; $250,000; $200,000—there are many $100,000 contributions. The totals run into many millions.

In many instances, there are overlapping campaign contributions, PAC contributions, and honoraria payments to Senators from the individuals, special interests, corporations and their officers and directors who contribute to the Senator's causes.

I tell you all this, my colleagues, for several reasons.

First, and most importantly to me, to demonstrate that I did not violate any established norm for Senate behavior.

Second, to warn every one of you who plays any part, direct or indirect, in fundraising for a charity or a foundation or whatever, that you are in jeopardy if you ever do anything at any time to help a contributor to that charity—no matter how worthy the cause, no matter how proper the need for help, no matter how proper the help you render. I stand before you as an illustration of that jeopardy.

Third, to suggest that reform is needed to protect you and to protect the Senate. I doubt that anything less will do than a ban on charitable fundraising by Senators or in their names. If you engage in such fundraising, sooner or later some of those you help will want your help. If they have a legitimate need, you will be hard put to refuse their request simply because they responded to your request. And then you are headed for trouble. On the other hand, how can you not help them?

Let me turn to the matter of political contributions.

The committee stated on February 27:

> It is a fact of life that candidates for the Senate must solicit and receive assistance in their campaigns, including the raising of campaign funds.

Of course, we all know that. Raising these funds can often lead, as we also know, to charges of wrongdoing. It is now more likely than ever to lead to charges of wrongdoing because the Ethics Committee has enunciated formally a new principle: That it is improper for a Senator to engage in a legitimate constituent service on behalf of a contributor close in time to a lawful contribution to a Senator's campaign or PAC.

It seems to me, and it seems to my attorney, Alan Dershowitz, that the committee has applied this new principle to me in an ex post facto fashion. But this point really has less to do with me than it does with most of you. My fundraising for my campaigns is over since I decided not to run again. And my political fundraising was not a major issue with the Ethics Committee. I received less in such political contributions than the other Keating Five Senators; in one case 80 percent less.

Congress, the House and our Senate, is the branch of Government closest to the people. We represent the people. We must serve the proper interests of the people who support us and elect us. If we do not, our constituents won't get the help they need and deserve, and we won't be reelected.

I ask you this—about this question—How can you rationally refuse to give legal and proper help at any time to someone who seems to have a reasonable grievance because he or she has contributed to your campaign?

Can you only help people who have not contributed?

Or can you only help people who have not contributed lately?

How lately?

And must you refrain from helping people who might contribute in the future?

How far in the future?

A majority of Senators feel it necessary to raise money all the time. Campaigns now go on for 6 years.

Constituents, whether contributors or noncontributors, seek help all the time.

Inevitably, contributions and actions sometimes overlap, time-wise.

How many of you, after really thinking about it, could rise and declare you have never, ever helped—or agreed to help—a contributor close in time to the solicitation or receipt of a contribution?

I do not believe any of you could say never. I am sure you do not really know at any time exactly who has contributed and who has not, and how much, and when. But all a political opponent, a reporter or anyone else has to do to find out is to look at your contribution report with the Federal Election Commission and match it with what appears in the CONGRESSIONAL RECORD and committee records about your official acts—speeches, motions, amendments, votes—and then, to make you look bad, charge improper conduct.

I assure you that the examples they could use are plentiful. The present system makes it virtually impossible—virtually impossible—for a Senator to avoid what some will assert is a conflict of interest. There is no Senate rule stating when you can and when you cannot help a contributor. I do not see how one can be formulated.

The Supreme Court, in a wise ruling in 1964 that I wish applied to Senate rules as well as to statutes, observed that: "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

I believe the only remedy is to get money out of politics. Therein lies salvation for you, for the Senate and, most of all, for the American people who are the ultimate losers until we end the role money plays, or seems to play, in our decisionmaking, and end the business of Senators and would-be Senators having to spend more and more of their time chasing the money needed to fund a successful campaign.

That means public financing. Nothing less will suffice.

Let us end the practice, a practice we engage in here unfortunately, of considering campaign reform on the basis of what will help or hurt Republicans, Democrats, incumbents, and challengers. That way, everybody loses.

Let us enact a campaign reform measure that will benefit the Senate, our country, and all the people. If we do not, what happened to me and the other Keating Five Senators can happen to any one of you.

I am particularly troubled by one other aspect of the resolution, and you should be, too. I differ with the suggestion that the way I handled so-called access differs from the established norm in the Senate.

How many of you could stand up and declare you never, ever decided to see or take a call from someone whose name you recognized, be it a friend, a prominent leader in your State or the Nation, a volunteer in your campaigns, or a contributor, while asking your staff to tend to someone you do not recognize? I doubt that any of you could honestly do so.

Furthermore, you know and I know that the Democratic Senatorial Campaign Committee, the Republican Senatorial Campaign Committee and the White House stage events where lobbyists and other individuals who pay $10,000, $15,000, $20,000 or even $100,000 a

year can mingle with the President, the Vice President, Cabinet Members, and Senators. The more people contribute, the more exclusive and intimate the event they may attend.

That is access.

And events are not the only time and place these generous contributors get access.

So let me ask, since I have been singled out for a reprimand on access today, who among you can be sure you will not be singled out for a reprimand on access tomorrow?

Here, but for the grace of God, stand you.

There is only one way out: Get money out of politics.

Enact public financing and enact it now.

There is another reform I urge upon you. Before any of you who have not yet endured this experience land before the Ethics Committee, it should be restructured.

I recognize that the committee labored under particularly difficult circumstances in my case, but its role is difficult in all cases, and difficult most of all for the Senators who are brought before it.

Today, there is no real due process in the Senate for Senators. We are not afforded constitutional rights that are available to all other citizens.

So long as ethics charges are dealt with by Senators, our fellow Senators, we are about as far away as we could possibly be from a jury that comes from anonymity and returns to anonymity when its work is done.

Unlike a sequestered jury, the Senators on the Ethics Committee read the press. They are public figures whose decisions will be weighed by their constituents. They have been buffeted in my case by vicious and inaccurate leaks that violated the rules, by press pressures, by perceived public pressures, and by mood swings in the public and within the Senate, especially in the wake of the Thomas-Hill affair and the matter of bounced checks over on the House side.

And apparently the committee was deadlocked along partisan lines for months.

It has been suggested that the committee should be revamped so that its members would consist not of sitting Senators but, instead, of former Senators, former judges, and outstanding laymen. I endorse that concept until and unless something wiser is proposed.

One more suggestion or warning: Beware of special counsels who transmogrify into special prosecutors.

One final point. Now that the Keating Five are finally leaving center stage, perhaps we should turn to the neglected causes and culprits in the S&L crisis. This case has distracted attention from the central role of two successive administrations whose ideology and policies led not to the failure of one institution but to the decimation of the entire thrift industry. And contributions from S&L officials and PAC's to the campaigns that brought those administrations to power were notably generous, far beyond any sum received by any of the Keating Five.

There is a certain irony in the fact that I stand before you a few days before Thanksgiving. At least and at last I am thankful that this long ordeal is finally coming to an end.

For those of you who may feel that I should pay for my conduct, let me assure you I have paid.

In terms of dollars, legal fees for myself and others for whom I feel a sense of responsibility, approach $1 million.

I am deeply grateful to Alan Dershowitz for pitching in pro bono with his wisdom and skill in these last days. I am deeply grateful to Harry Reid for his invaluable advice and help when I did not have an attorney and when I did.

I am also more grateful than I can say to the people of California, who have so often honored me with their votes, and who have always let me fight for my beliefs even when they were not sure they agreed.

What I have paid as a result of this whole episode, of course, goes far beyond money. The thing that is hardest is what it has done to my reputation and to the trust Californians have placed in me, things I value above all else.

I pledge to the people of California my best efforts for them in the 13 months left of my time in the Senate. I hope, I hope very deeply, as time passes that I will be remembered for my commitment to California's problems—and my loyalty, in good times and bad, to great progressive principles. Surely, I have not done everything right. But I hope that when my public life is weighed in the balance, it will not be found wanting.

These 2 years have taken much from me. The greatest cost is the anguish and uncertainty felt by my family and others who have stood with us.

May none of you ever have to battle cancer and something like this at the same time in your lives.

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

EXHIBIT 1

[U.S. Senate Select Committee on Ethics]

WRITTEN SUBMISSION IN RESPONSE TO THE COMMITTEE'S FEBRUARY 27, 1991, RESOLUTION

(Senator Alan Cranston, U.S. Senate, Washington, DC, April 22, 1991)

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I—INTRODUCTION AND SUMMARY OF MY WRITTEN SUBMISSION

This submission constitutes my response to the Statement and Resolution issued by the Select Committee on Ethics on February 27, 1991.

I have prepared this submission personally because, as you know, I cannot afford to continue to employ legal counsel.[1] Treatment of my prostate cancer made it impossible for me to defend myself during the public sessions of the Committee last November, December and January, and to communicate with my attorney in the way that the other four Senators who were under investigation could. I am pleased to have this opportunity to clear up certain false impressions that the hearings created and to point out inaccuracies, omissions and inappropriate inferences in the February 27, 1991 Committee documents.[2]

It is my understanding that the substantive issue is whether there is "clear and convincing evidence" of a causal connection between my official actions and donations—most of them charitable—that I collected for others.

I will show that there is, that there is *no direct evidence* of any such causal link. I will cite clear and convincing evidence that there were other causes—very legitimate causes—for my official actions.

The Resolution *infers* a causal connection from the proximity in time between the charitable donations and the official actions. Proximity in time is *not* clear and convincing evidence that the charitable donations caused my official actions. The Resolution's *inference* of a causal connection cannot survive dispassionate, reasoned analysis. It cannot be a substitute for clear and convincing evidence. The inference is particularly inappropriate and unfair given that my conduct was *not different in kind*, as I will show, from that of other Senators who have been under inquiry. The Resolution did not draw such adverse inferences against them.

In retrospect, I can see that the proximity in time between the charitable donations and the official actions could lead to an appearance of impropriety where no impropriety existed. I wish I had forseen this development—I have always endeavored to avoid appearances or actions that could reflect adversely upon the Senate or myself.[3]

I acknowledge and I accept the consequences of an appearance of impropriety due to proximity of time.

However, since timing and appearances did not warrant institutional action in the cases

of the other Senators, it should not in my case.

The Senate has never set standards *of any kind* governing the timing of contributions of any kind in relationship to legitimate constituent services. I fully recognize that if a Senator engages in conduct that is inimical to generally accepted and understood standards and values, the Senate has an obligation to find that Senator guilty of improper behavior, although his conduct does not violate a specific law or Senate Rule. There is no evidence that I engaged in any improper conduct.

Without clear and convincing evidence of actual impropriety, there is no justification for subjecting me to disciplinary action. There is *no precedent* for the Senate disciplining a Senator for actions such as mine. The Senate has *never* determined that it is an ethics violation for a Senator to engage in legitimate constituent service on behalf of a contributor because it was—or might appear to be—close in time to a lawful donation to the Senator's campaign or to a charity the Senator supports. To do so now would be contrary to the principles of the Senate and a violation of traditional concepts of fair play by proceeding in an *ex post facto* fashion.

In every case of financial impropriety considered by the Senate throughout its history, the alleged misconduct was the use of public office for a Senator's *private* profit. Neither any member of my family nor I received any compensation or personally benefitted in any way from these charitable contributions. I had no financial interest in Lincoln Savings, its parent, or affiliates. I received no income from it.

I will discuss the Special Counsel's proposal to extend to Senators the appearance standard in the Code of Ethics for Government Service that applies to federal judges and civil servants. The Senate has never adopted that code as an ethical standard applicable to Senators. There is no reference to it in any of the over 400 published Interpretative Rulings issued by the Select Committee on Ethics. The Special Counsel overlooks fundamental differences between federal judges and civil servants. Federal judges and civil servants do not have to raise funds to stay in office. A judge is not expected to serve the interests of the parties before him. A Senator is expected to *represent* his constituents, and to be—and to appear to be—responsive to their legitimate needs. Senators should not be at risk of discipline for violation of an appearance standard that would prevent us from intervening on behalf of constituents, contributors and non-contributors alike, when intervention is appropriate.

I want to clarify a crucial point that apparently was not made sufficiently clear during the hearings. I refer to my charitable fund-raising activities intended to increase voter participation. More than 10 years ago, the facts about the deplorable decline in voter participation in the United States came to my attention. I was appalled. It struck me that the very essence of our democracy was at risk as fewer and fewer Americans—particularly our youth—participated in the democratic process.

I discovered that one of the reasons for the voter fall-off was our antiquated and frequently onerous registration laws, which tend to discourage voting—especially among some of our minority populations. I was determined to do something about it.

I wrote articles. I gave speeches. I introduced legislation calling for reform. But until reform could take place, the only effective action I could take was to support non-partisan voter registration efforts across the country. The I.R.S. granted tax exempt status to donations for this cause. The I.R.S. regulates the donations to charitable organizations. To qualify for tax exemption, organizations must meet and continue to satisfy established criteria.

Enhancing voter participation became my personal crusade. In 1986, I directed much of my time and energy to it in addition to my Senatorial duties and my Senate reelection campaign. I increased my efforts in the 1987-88 campaign cycle because in the 1986 election, turnout dropped so low that over 62% of the national electorate failed to vote. Both parties "lost" the election—Democrats received only 18.9% and Republicans only 17% of the eligible votes.

Volunteering my time and effort, I raised $7,610,000 for voter participation programs in 1987-88. *$6,415,230—84.3% of the total—was in the form of I.R.S. approved tax-deductible charitable donations for non-partisan voter participation 501(c)(3) organizations throughout the country.* Although I accepted the checks on behalf of these organizations, *I had no control over how the money was to be spent.* The remainder of the donations went to support efforts to raise charitable donations for I.R.S. approved non-partisan voter participation groups.

This project required an annual operating budget of $250,000 and necessitated the establishment of America Votes (later known as USAVotes), an organization with a staff of three to five people. Two hundred sixty four individuals, foundations, unions, associations and corporations donated to this cause. Mr. Keating was not the largest donor, nor the only donor with a pattern of multiple giving.[4]

I strongly urge the Committee to take the time to understand the differences between the *charitable donations* I raised from Mr. Keating to increase voter participation and the *political contributions* raised from Mr. Keating by the other four Senators. These charitable donations—unlike political contributions—were of no direct political benefit for me. They were made *after* my 1986 reelection. *Senate Rule 37 expressly permits Senators to engage in fund-raising for charities, and many members quite properly do so.* The Committee acknowledged in its Statement that my solicitation and acceptance of charitable donations by Mr. Keating was legal and did not constitute a personal gift.

The Committee also acknowledges that political contributions are "a fact of life". Large campaign war chests are often the largest factor in winning—and keeping—a Senate seat. *Mr. Keating raised and contributed more political contributions to the campaigns and P.A.C.'s of each of the other four Senators, who had direct control over these contributions, than he did to mine.*

Mr. Keating was an acknowledged big giver: a big contributor in the political arena and a big donor in the charitable arena. He gave and loaned more than $44 million to Mother Teresa, Convenant House, the St. Vincent de Paul Society and anti-pornography drives. He gave and raised huge sums for political campaigns and candidates such as the $200,000 he gave to Senator Glenn's P.A.C. and $100,000 he contributed to George Bush's Team 100.

The Committee Resolution pertaining to me is in two parts: first, four "occasions" and questions related thereto about my official actions and fund-raising on behalf of charitable and related organizations; and, second, three questions concerning certain actions of Ms. Joy Jacobson, who though most of the time in question, was employed part-time by USAVotes to assist in raising charitable donations. I will examine each of these questions in detail. I will show that the Resolution is inaccurate, unfair and misleading in many of its statements with respect to these questions.

I respectfully, but urgently, request all members of the Committee to review the Resolution carefully and thoroughly in light of this submission.

When viewed fairly and impartially, the evidence regarding these charitable and related donations shows that at most there may have been some proximity of timing to official actions, and consequently perhaps bad judgment and an appearance of impropriety—*but nothing more.*

I will cite the evidence in the record that shows similar instances of proximity of timing between official actions and the receipt of *political contributions—not charitable donations*—by Senators DeConcini, Glenn and Riegle. In their cases, the Committee drew no inferences about and made no findings of any casual connections.

The Committee found that the conduct of Senators DeConcini and Riegle gave the appearance of being improper and was "attended with insensitivity and poor judgment"—*but nothing more.* The Committee voiced no criticism of Senator Glenn for his conduct in this respect.

There simply is no evidence establishing a difference in kind between my actions and the actions of Senators DeConcini, Glenn and Riegle—except that the money they raised was for their own political use, while the money I raised was charitable and for the use of others. It was not for my use.

Since there are no differences in kind between my actions and the actions of the other Senators, treatment of my actions *should not differ in kind* from treatment of their actions.

I will show that all five Senators had varying degrees of involvement concerning Lincoln Savings. In some respects, some Senators were more involved than I.

Regarding the activities of the USAVotes employee cited in the Resolution, I will show that she was not under my direct supervision. I also will show that, contrary to assertions in the Resolution, her activities were separate and distinct from my Senate office; that in at least one instance her solicitation of funds from Keating was made without my prior knowledge; that the Special Counsel drew unfair and inaccurate inferences from memoranda she wrote; that she did not repeatedly schedule and attend meetings between contributors and myself in which legislative or regulatory issues were discussed; that she did not engage in substantive discussions and never influenced, or attempted to influence, any official decision or action of my staff's or of mine; and that she did not serve as an intermediary for Messrs. Keating or Grogan but simply passed messages along occasionally when they were unable to reach me or members of my Senate staff.

I grant that some of Ms. Jacobson's activities were susceptible to creating an appearance of impropriety. Some of her memos were written carelessly, without thought to appearances. I should have realized that when I read them. But, in the press of my heavy and hectic Senate workload, I failed to do so. Some of her actions likewise could lead to false impressions. I failed to realize that at the time. I will show, however, that her testimony demonstrates that she understood very well that there must be no con-

nection between official actions and donations, *no quid pro quo*. Like my own activities, her activities do not provide any evidence of a causal connection between my official actions and solicitation of donations. *Certainly none of her activities can warrant that the Committee recommend institutional action against me.*

I deeply regret that I failed to foresee that soliciting charitable donations close in time to official action could lead to an appearance of impropriety.

I regret that I did not constrain more closely the actions of the part-time employee of USAVotes.

I concede these errors, but these were errors in judgment, not in intent.

II—MY ANSWERS TO THE COMMITTEE'S FOUR QUESTIONS RE: POSSIBLE CAUSAL CONNECTIONS BETWEEN CHARITABLE DONATIONS AND OFFICIAL ACTIONS

Section (a)(1) of the Resolution cites four occasions when fund-raising and official actions were allegedly in "close connection". There may have been some proximity in time upon these occasions. There is no evidence of a causal connection. There is evidence to the contrary.

The following examines each occasion, quoting the question in the Resolution and then analyzing what the record shows about: first, the evidence regarding charitable and related donations; second, evidence regarding any official actions my staff or I took; and, third, evidence showing that there were indeed no cause and effect relationships between Mr. Keating's donations and my actions.

A. Paragraph (a)(1)(i)

"Paragraph (a)(1)(i) states: As a result of a solicitation from Senator Cranston in early 1987, Mr. Keating, on March 3, 1987, contributed $100,000 to America Votes, a voter registration organization. This contribution was made during the period leading to Senator Cranston's participation in the April 2 and April 9 meetings with Federal Home Loan Bank Board Chairman Edwin J. Gray and the San Francisco regulators."

(i) 1. *Donation:* The Resolution accurately notes that a donation was made on March 3, 1987, to America Votes. (Sp. Coun. Ex. 159). America Votes (later known as USAVotes) raised tax-deductible charitable donations for I.R.S. approved 501(c)(3) independent, non-partisan, grass roots, voter registration organizations in approximately 20 states during 1987 and 1988.

2. *Official Action:* The Resolution is inaccurate and very misleading in stating that this donation was made during the period leading to my participation in the April 2 and April 9 meetings.

The evidence is undisputed that the donation was discussed, solicited and committed on or before *February 24, 1987*. (Stein Affidavit, Sp. Coun. Ex., 458, para. 14); (AC, 4/30/90, p. 119). The donation check was dated *March 3, 1987*. (Sp. Coun. Ex. 159). The evidence shows that I knew nothing about the proposed meetings before the *second half of March*, and perhaps not until the *last week* in March. (JG, 12/15/90, p. 88); (AC, 4/30/90, p. 119). Furthermore, the preponderance of evidence shows that the meetings first were conceived *after* the donation was solicited and received. (Gray, 2/23/90, p. 15; 11/29/90, p. 64); (Grogan, 12/12/90, pp. 56–58, 208); (Riegle, 1/7/91, pp. 29–32, 46–9, 51–55, 101–2, 163); (DeConcini, 1/9/91, pp. 45–6, 49, 51–2, 60–63, 199–200, 203, 209); (McCain, 1/4/91, pp. 27–21, 26, 111, 163–4); (Glenn, 1/4/91, pp. 240–47, 193).

The evidence shows that the April 2 meeting date was not set until a few days prior to the event. (Gray, 2/23/90, p. 15). The evidence shows that the second meeting on April 9 grew out of the April 2 meeting. The evidence shows that I played a very minor but proper role in the April 2 meeting. I asked why the audit was taking so long and agreed with Senator Glenn that if Mr. Keating has broken any law he should be prosecuted, but if he hadn't the regulators should get off his back. (AC, 4/30/90, pp. 131, 133); (Gray, 11/27/90, p. 51). The evidence shows that my participation in the April 9 meeting was essentially limited to sticking my head in the door for a minute. (AC, 4/30/90, p. 150); (Sp. Coun. Ex. 193).

3. *No Causal Connection:* The Committee's findings conclude that each of the five Senators had information that reasonably caused concern about the fairness of the Bank Board's examination of Lincoln and that was sufficient to justify contacting Bank Board personnel. (Committee Statement, 2/27/91, p. 1, para. 4). The Committee found that, without regard to donations or other benefits, no Senator violated any law or Senate rule by attending the April 2 and 9 meetings. (Committee Statement, 2/27/91, p. 1, para. 1).

The evidence shows that in that point in time all five of us had good reason:

To view Mr. Keating as a highly successful and respected businessman.

All five of us also knew that:

Alan Greenspan, who is now the Chairman of the Federal Reserve, had stated in his opinion that Lincoln was solvent for the foreseeable future. (Sp. Coun. Ex. 159); (AC, 4/30/90, p. 101).

Arthur Young, one of the "Big Eight" accounting firms, had found Lincoln to be in good shape and was very critical of the regulators.[5] (Sp. Coun. Ex. 161); (AC, 4/30/90, pp. 99–100).

I had several additional reasons to be concerned about the fairness of the Bank Board's examination of Lincoln:

Lincoln was a California-chartered Savings and Loan. Many thousands of its employees and depositors were my constituents. Their jobs and financial security were at risk.

I was aware—as perhaps the other Senators were not—that the Arthur Anderson firm, another of the "Big Eight" accountants, had found Lincoln to be in good shape and had grave questions about the performance of the regulators. (AC, 4/30/90, p. 102).

I previously had engaged in a confrontation with Mr. Gray, the Chairman of the Bank Board, and had the clear impression that he was incompetent. (AC, 4/30/90, pp. 106–9).

Mr. Gray had worked in public relations for a savings and loan institution in San Diego, California, before he was appointed to chair the Bank Board. I knew he had a poor reputation in the San Diego business community. (AC, 4/30/90, p. 107).

I knew that a principal newspaper in California, the Los Angeles Times, had called for Mr. Gray's resignation from the Bank Board after the General Accounting Office found he had misused $27,000 of public funds. (*Id.*; Cranston Ex. 57); (AC, 4/30/90, p. 92).

Thus the *evidence is overwhelming* that (a) I had many sound and official reasons to participate in the April meetings, where I played a very minor and proper role, and (b) the donation was solicited and received weeks before I knew of the April meetings. The preponderance of the evidence shows that the donation was solicited and received before *anyone* even conceived of the meetings.

There is no evidence—nor could there be—that I attended the April meetings because of the donation.

B. Paragraph (a)(1)(ii)

"Paragraph (a)(1)(ii) states: In the fall of 1987, Senator Cranston solicited from Mr. Keating a $250,000 contribution, which was delivered to the Senator personally by Mr. Keating's employee James Grogan on November 6, 1987. When the contribution was delivered, Mr. Grogan and Senator Cranston called Mr. Keating, who asked if the Senator would contact new Federal Home Loan Bank Board Chairman M. Danny Wall about Lincoln. Senator Cranston agreed to do so, and made the call six days later."

(ii) 1. *Donation:* There was not one but two donations that were delivered on November 6, 1987. The Resolution omits any description of them, and fails to make clear that these were *not* political contributions to any campaign of mine or to my P.A.C. I received no direct political benefits from the donations.

$225,000 was in the form of a charitable donation to Forum Institute, an I.R.S. approved 501(c)(3) tax-deductible organization. Forum distributed funds to non-partisan, 501(c)(3), grass roots organizations that registered voters in approximately 20 states. (Sp. Coun. Ex. 145). I accepted the check on behalf of Forum and turned it over to Forum. I had no control over Forum or how the money was used. The independent officers and directors of Forum had that control. (Harmon Affidavit, Sp. Coun. Ex. 501, para. 13).

$25,000 was in the form of a contribution to USAVotes (formerly America Votes) to support its efforts to raise charitable donations for I.R.S. approved 501(c)(3) non-partisan registration groups. (Sp. Coun. Ex. 146).

The Resolution also fails to mention that the donations were agreed to before October 6, 1987 (Sp. Coun. Ex. 182), more than a month prior to my status inquiry call to Mr. Wall.

2. *Official Action:* My notes about the call to Mr. Wall establish that it was a status inquiry.[6] I asked if the end of the audit of Lincoln was in sight. Mr. Wall and I also discussed the personality problems between Lincoln and the San Francisco regulators. (Sp. Coun. Ex. 147). Mr. Wall's testimony confirmed this. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.). Mr. Wall also testified that I did not urge him to take any particular course of action. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.).

Furthermore, there is *no* evidence that I attempted to influence the regulatory actions of Mr. Wall *or any other* regulator at any time. Every regulator who was called as a witness or in an affidavit testified that none of his or her actions were influenced by any contact from my office or from me. (Wall Affidavit, Sp. Coun. Ex. 428, p. 6, para. 9); (Rosemary Stewart, 1/2/91, pp. 10–11, 196); (Wall, 12/4/90, pp. 104, 116, 181–2, 184, 191); (Martin, 12/3/90, p. 58; Martin Affidavit, Sp. Coun. Ex. 17, para. 11); (Gray, 11/27/90, p. 97); (Patriarca, 11/27/90, p. 147); (Black, 12/6/90, pp. 29–30); (Cranston Ex. 78, Dochow Aff. Attachments A–1 at 19–20 & A2 at 41).

3. *No Causal Connection:* It flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for anyone to donate or contribute *anything* to me in order to get me to do *anything*.[7]

The routine status call that I made to Mr. Wall on November 12 was not motivated by the personal concerns of Mr. Keating. The jobs and financial security of thousands of my California constituents were at stake. I made the call for the same reason that I attended the April 2, 1987 meeting—because I believed it was necessary and proper that I

do so on behalf of my many constituents who had stakes in Lincoln.

The Resolution is incorrect in concluding that Mr. Keating asked me to contact Mr. Wall when I was on the phone with him in Mr. Grogan's presence. At best, there is conflicting testimony on this point. (AC, 4/30/90, pp. 188 & 190); (JG, 12/14/90, p. 162). I do not recall a request from Mr. Keating on November 6 that I call Mr. Wall. *Nor* do I recall that my November 12 call to Mr. Wall was the result of a request from Messrs. Keating or Grogan.

The Resolution implies that there was a causal connection between the receipt of the donations and my decision to call Mr. Wall on November 12. There is *no* evidence to support such a conclusion.

Furthermore, Mr. Grogan testified that there was never "any suggestion, either by word or by body language, or by a raised eyebrow" that my interest in Lincoln's problems was tied to Mr. Keating's support of non-profit voter registration efforts. (JG, 12/15/90, p. 132). Mr. Grogan also testified, "There was never an occasion where Mr. Keating asked Senator Cranston to do something and Senator Cranston said, 'only if you raise funds for me.' There was never an occasion where Mr. Keating said, 'If you do this for me, I will raise X amount of dollars for you.'" He testified that there was never "even the suggestion" that fund-raising and official actions were connected in any way. (JG, 12/12/90, pp. 185–8). I repeatedly have testified that there was no connection between Mr. Keating's donations and my decisions to contact the regulators regarding Lincoln. (AC, 4/30/90, p. 95).

C. Paragraph (a)(1)(iii)

"Paragraph (a)(1)(iii) states: In January 1988, Mr. Keating offered to make an additional contribution and also asked Senator Cranston to set up a meeting for him with Chairman Wall. Senator Cranston did so on January 20, 1988 and Chairman Wall and Mr. Keating met eight days later. On February 10, 1988 Senator Cranston personally collected checks totaling $500,000 for voter registration groups."

(iii) 1. *Donation:* The Resolution incorrectly insinuates that (a) in January, 1988, Mr. Keating offered to make an additional charitable donation in connection with his asking me to set up a meeting for him to meet with Mr. Wall; and (b) based on my setting up the meeting, Mr. Keating made charitable donations in February. The Resolution's insinuation is unfair and inaccurate and cannot be substantiated in any way.

There is *no* clear and convincing evidence that Mr. Keating offered to make an additional donation in January, 1988.

Mr. Keating did make two charitable donations to voter registration groups on February 10, 1988 in Phoenix. The Resolution omits the fact that these were two I.R.S. approved charitable, tax-deductible donations to 501(c)(3) organizations for non-partisan, voter participation efforts. One was to Forum Institute, an organization I've already described. The other was to The Center for Participation in Democracy, that engaged in and supported non-partisan registration drives in several states. *Neither* of these two organizations, nor the use of the money, was under my control.

Regarding this period, there is considerable testimony about a dinner I attended in January with Messrs. Keating, Grogan, and others. Mr. Grogan testified that he recalls no discussion of fund-raising at the dinner. (JG, 12/14/90, p. 166; 12/13/90, p. 24 & p. 265). My son, Kim Cranston, who was present, testified that he recalls no specific offer of support by Mr. Keating. (KC, 6/28/90, p. 15). I testified similarly that (a) I did not solicit any funds at the dinner, (b) that I did not recall the discussion of any specific funds, and (c) that Mr. Keating may have indicated in a *vague* way that he would continue to support registration efforts. (AC, 4/30/90, p. 191; 10/16/90, p. 87).

Mr. Grogan testified that he was not aware of any solicitation that preceded my February 10 visit to Phoenix. (JG, 12/13/90, pp. 261–2).

My visit to Phoenix had been in the works since at least September of the previous year. (JJ, 12/3/90, pp. 164–6). Messrs. Keating and Grogan had a long standing policy of inviting members of Congress, their staffs, and others to visit Phoenix to see the Lincoln/American Continental Corporation operation first hand. Many Congressmen and staff members have visited his company in Phoenix. Mr. Grogan testified that he had invited me to visit Phoenix several times. (JG, 12/14/90, pp. 169–70; 12/15/90, pp. 119–20). I had wanted to visit to see for myself the type of operation Mr. Keating was running. (AC, 4/30/90, p. 184). This was the first time that my schedule permitted this trip. (JJ, 7/19/90, p. 167); (JG, 12/13/90, p. 17). Ergo, this trip *was totally coincidental* to the Wall/Keating meeting. It *had no connection* with the Wall/Keating meeting.

It is also equally coincidental that this trip finally occurred at the beginning of a new year, and thus coincided with the timing implicit to Ms. Jacobson's practice of seeking contributions from individuals twice in a given year—early and late. (JJ, 12/2/90, p. 161). Ms. Jacobson, in her capacity as a part-time USAVotes employee, had written me a memo dated February 4, 1988, stating that the main goal concerning Mr. Keating was to receive a charitable donation as soon as possible so that he could be asked for an additional donation in the fall. (Sp. Coun. Ex. 269). She testified that the timing of solicitations of donations was largely driven by her own timetable and that charitable giving is based on an annual cycle. (JJ, 12/3/90, pp. 176, 219).

By happenstance, this trip to Phoenix was also consistent with my practice of going to visit potential donors—rather than inviting them to visit me—to get help for the registration efforts. (AC, 10/16/90, p. 87); 12/3/90, p. 143).

2. *Official Action:* There is *no evidence* that Mr. Keating committed to make a specific donation in connection with asking me to set up an appointment with Chairman Wall to see him.

The evidence shows only that Ms. Jacobson sent me a memo dated January 18, 1988 relaying a request to her from Mr. Grogan that I help schedule a meeting between Messrs. Keating and Wall. (Sp. Coun. Ex. 172).

I have testified that I called Mr. Wall on January 20, 1988 and asked him if he would be willing to see Mr. Keating. Mr. Wall responded to me that he was willing to meet with Mr. Keating but it might not be necessary because he thought the problem between Mr. Keating and the Bank Board was being worked out. During my conversation with Mr. Wall, no commitment was made to meet, nor was a firm meeting date arranged. (AC, 4/30/90, p. 249). Mr. Wall testified that he was not sure if I had asked him to meet with Mr. Keating. (Wall Test., 12/4/90, pp. 33 & 131). There is *no evidence that I even knew about the meeting* that did occur on January 28, 1988. I did not set it up. The arrangements must have been made by Messrs. Keating and Wall or their assistants.

3. *No Causal Effect:* Once again, it flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for *anyone* to make *any* donation in order to induce me to do *anything* or to *reward* me for doing it. I made the call to Mr. Wall regarding a major California business in view of apparent regulatory excesses that were amounting to harassment. The Committee has stated: (a) Senators should and do provide such constituent services; and (b) that there were sufficient reasons to contact the Bank Board regarding Lincoln. (Senate Ethics Committee Statement, 2/27/91, p. 1, para. 4).[8]

There is no evidence of a causal connection between my January 20, 1988 telephone call and the charitable donations. There is no specific evidence that there was even a solicitation of Mr. Keating or a discussion of any donation prior to the February 10, 1988 trip.[9] In fact, for six months there had been efforts to schedule a trip to Phoenix that finally occurred in February, 1988 and resulted in the receipt of charitable donations. *It is pure coincidence* that the trip finally was scheduled and the donations were received three weeks after my telephone call to Mr. Wall.

Coincidence in time and unsubstantiated inferences about proper inquiries such as my telephone call and receipt of charitable donations on a trip that had been in the making for many months cannot properly substitute for the lack of clear and convincing evidence of improper linkage, particularly where there is factual and convincing evidence that Mr. Keating *did not* ask me to set up a meeting in connection with a solicitation of a donation of any type.

D. Paragraph (a)(1)(iv)

"Paragraph (a)(1)(iv) states: In early 1989, at the time that Senator Cranston was contacting Bank Board officials about the sale of Lincoln, he, personally or through Joy Jacobson, his chief fund-raiser, solicited another contribution. (This contribution was never made. American Continental Corporation declared bankruptcy on April 13, 1989.)"

(iv) 1. *Donation:* The Resolution fails once again to point out that this was a solicitation of an I.R.S. approved 501(c)(3) charitable tax-deductible donation, the use of which I did not control. It was *not* a solicitation of political contributions for my benefit. The Resolution accurately states that this donation was never made.

The Resolution's description of Ms. Jacobson is misleading. In early 1987, she directed the fund-raising staff of the Democratic Senatorial Campaign Committee. At the time in question, early 1989 (and for more than a year before that) she was spending 50% of her time as a consultant to the Democratic Senatorial Campaign Committee; 25% as a consultant to a P.A.C. I fund (Committee for a Democratic Consensus); and 25% as a consultant under contract to USAVotes to raise charitable donations for registration efforts.

Mr. Rob Stein, the Executive Director of USAVotes, was in charge of its over-all operations. I was one of three cochairmen of USAVotes. I was not the direct supervisor of Ms. Jacobson in her capacity as a part-time employee of USAVotes, nor was I the direct supervisor of any other USAVotes employees.

There is conflicting testimony concerning who solicited Lincoln at this time. I have testified that I do not recall discussing a donation with Messrs. Keating, Grogan or anybody during this period. (AC, 10/16/90, p. 68; 5/17/90. p. 299). I do not believe such a discussion ever took place. Mr. Grogan, when

asked whether anybody on my staff or I solicited a donation from him or Mr. Keating during this period, testified that Ms. Jacobson, not I, discussed a donation with him. (JG, 12/14/90, pp. 179–80). Ms. Jacobson's recollection was that I solicited Mr. Keating during the period. (JJ, 12/3/90, pp. 167–8).

I believe the following shows that Ms. Jacobson initiated the solicitation and that she did so without my knowledge.

A memorandum from Joy Jacobson to me and to Rob Stein, the Executive Director of USAVotes, dated March 1, 1989, written on her home computer, shows that I did not make the solicitation and illustrates the mechanics of how the staff of USAVotes and I worked to solicit charitable donations. (Sp. Coun. Ex. 171). It was Ms. Jacobson's job to come up with the names of people, foundations and organizations which she thought would be potential donors. She would write a memorandum with the potential donors' names, suggestions as to who should contact them, and the amounts to be requested. When I reviewed it, I would look down the list for the names suggested for me. I would systematically try to call most, but not necessarily all, of the names suggested to me. When my part of the list was complete, I would hand it back with my notes about the calls to my secretary. She would report these results back to Ms. Jacobson.

There are 18 names of potential donors on the March 1, 1989 memo. My handwritten notes or my secretary's notes appear under 12 of those names—only those that were proposed as my assignments.

It is clear that Ms. Jacobson assigned herself three names on the first page: AFSCME, Dick Darling, and Charlie Keating. After Mr. Keating's name these words are typed in the memo: "Joy is talking with Jim Grogan. 100,000 wherever it's needed."

This evidence corroborates Mr. Grogan's testimony that Ms. Jacobson, not I, made this solicitation. It indicates that her memory was incorrect when she testified that I solicited Mr. Keating. It shows that on the date of the memo, March 1, 1989, she had already discussed a $100,000 donation with Mr. Grogan.

Ms. Jacobson's solicitation of Mr. Grogan is consistent with her explanation in her testimony "that the first group you go back to [at the beginning of each year is] your past donors and try to renew them." (JJ, 12/3/90, p. 161). Her solicitation of Mr. Grogan on her own is further evidenced by Ms. Jacobson's statement that "the timing of the fund-raising was something that was driven by my finance plan. If anyone was controlling the timing, I would say I was." (JJ, 12/3/90, p. 176). She also stated that I never suggested to her to time any request for a donation to coincide with anything before the Bank board or with any other event or events. (JJ, 12/3/90, pp. 175–6).

2. *Official Action:* The record shows that, working on an entirely different track from Ms. Jacobson, I called Chairman Wall and Bank Board Members Roger Martin and Larry White between February and April 1989 for the sole and limited purpose of urging that careful consideration be given to three different proposed sales of Lincoln.

Both Mr. Wall and Mr. Martin testified that in none of my calls did I urge final approval of any sale, and that there was nothing improper about the nature of my calls. (Sp. Coun. Ex. 428, Wall Affidavit, para. 10h, 12); (Sp. Coun. Ex. 17, Martin Affidavit, para. 11). The Resolution fails to describe the very limited and non-advocacy nature of my calls. It also fails to note that when Messrs. Keating or Grogan asked me to push hard for the approval of a specific sale of Lincoln, I refused to do so. (AC, 5/7/90, pp. 327–8); (Wall, 12/4/90, p. 91).

3. *No Causal Connection:* It is again absurd to suggest that a donation of *any* sort would be necessary to motivate me to help my California constituents. There is no evidence that I contacted the Bank Board regarding the potential sale of Lincoln because of any donation. I made the calls because a proper sale would resolve a situation that otherwise could have led to a financial catastrophe in my state, California, that would have financially injured countless constituents of mine.

For whatever reason, none of the sales materialized. However, the concerns that motivated my calls did occur. The consequences have been catastrophic: a cost to taxpayers presently estimated by the Resolution Trust Corporation to be $2.6 billion; tragic losses of the life savings of 23,000 Californians, mostly elderly and infirm, who bought approximately $200 million in now worthless debentures at Lincoln; and the loss of many jobs in California. The Committee correctly found that my contacts with regulators and those of the other four Senators were not the cause of the eventual failure of Lincoln or the thrift industry in general. (Committee Statement, 2/27/91, p. 1, para. 5).

The Resolution ignores my true motivation for making the telephone calls between February and April, 1989, instead favoring the *inference* that the calls were motivated by a possible charitable donation that was never made. This inference ignores my legitimate motivation: To prevent financial damage to many of my constituents.

In response to the influence I point to the clear and convincing evidence that (a) I did not solicit a charitable donation, and that (b) I did not know that Ms. Jacobson had made a solicitation until I read her memo of *March 1, 1989.* Once I knew, the knowledge had no effect on my conduct.

Ms. Jacobson testified that she was not aware that Messrs. Keating or Grogan was talking to me about the sale, nor that I was being asked to do anything about it. (JJ, 7/19/90, p. 179).

There is absolutely no evidence of any causal connection between (a) Ms. Jacobson's solicitation, and (b) my telephone calls in 1989 to regulators regarding possible sales of Lincoln. Here, again, unsubstantiated inferences based solely on mere coincidence of time *cannot be a substitute* for evidence of a causal connection between a solicitation and an official action.

The *fair inference* from the record is that Ms. Jacobson was on one track following up according to her standard practice with one of the few established contributors whom she solicited personally and regularly at the beginning of each year. Meanwhile, I was on another track taking very limited official actions contacting regulators regarding the possible sale of Lincoln—actions for which there was clear and independent constituent related justification. Senator DeConcini made the same type of inquiries for similar reasons.

The foregoing analysis of each of the four "occasions" cited in the Resolution demonstrates that there is absolutely no evidence of a causal relationship between any of Mr. Keating's donations and any of my actions, and that there is overwhelming evidence to the contrary.

I remind the Committee again of Mr. Grogan's response when my attorney asked him the following question: "Was there any suggestion, either by word or by body language, or by raised eyebrow, that Senator Cranston's interest in Lincoln Savings' problems was tied to Mr. Keating's support of the non-profit voter registration efforts?" Mr. Grogan replied, "Never." (JG, 12/15/90. p. 132).

The Special Counsel has cited no evidence that Mr. Keating authorized donations only on condition that I would help him, or because I had helped him. He cited no evidence that I agreed to help only if Mr. Keating contributed.[10]

III—MY ANSWERS TO THE COMMITTEE'S THREE QUESTIONS RE: A PART-TIME EMPLOYEE OF AN ORGANIZATION THAT RAISED I.R.S. APPROVED 501(C)(3) CHARITABLE DONATIONS

The Resolution raises questions in Section (a)(2) about my Senate office practices, citing three examples of activities engaged in by Ms. Jacobson, a part-time employee of USAVotes, over whom I had no real supervisory role. I have already indicated that she was *not* a member of my Senate staff. She had no substantive expertise in Banking Committee issues and did not subsequently involve herself in my official Senate activities.

The words "Senate office practices" is inaccurate and misleading. Ms. Jacobson came to my office occasionally, but by no means frequently or regularly. She worked out of her home in Virginia. Unlike the practice in some Senate offices, I have never assigned major political fund-raising responsibilities to anyone serving part time or full time on my Senate staff. I have designated two Senate staff members under Rule 41, but they have done comparatively little political fund-raising. All fund-raising efforts with which I have been involved, whether political or charitable, have been the responsibility of individuals employed elsewhere—*not* in my Senate office.

Although some of Ms. Jacobson's activities are susceptible to an interpretation that they raise an *appearance* of impropriety, they do not constitute clear and convincing evidence of a causal connection between (a) my personal official actions and (b) solicitations of donations I made or of which I was aware.

A. Paragraph (a)(2)(i)

"Paragraph (a)(2)(i) states: Senator Cranston's fund-raiser repeatedly scheduled and attended meetings between Senator Cranston and contributors in which legislative or regulatory issues were discussed."

The Resolution unfairly uses the word "repeatedly". Mr. Grogan met Ms. Jacobson in 1984. (JG, 12/12/90, pp. 71–73); (JJ, 12/3/90, p. 91; 7/19/90, p. 37). He testified that he would call her to schedule appointments until he became acquainted with members of my Senate staff and began to turn to them to arrange appointments. (JG, 12/12/90, p. 93).

Ms. Jacobson testified that after March, 1987, the only meetings which she was involved in arranging were for fund-raising or social purposes, not substantive purposes. (JJ, 12/3/90, p. 96). She testified that she didn't know about April 2 and April 9 meetings until long after they occurred. (JJ, 12/3/90, p. 130). She testified that she arranged *no* substantive meetings during the entire two year period from April, 1987, to April, 1989, during which the other three "occasions" occurred that raise questions of causal connections. [Referred to in Paragraph (a) 1 of the Resolution].

The Resolution inaccurately states that Ms. Jacobson scheduled meetings for me. The evidence shows that she had to go through my Secretary or my Administrative

Assistant to place appointments on my schedule.[11] (JJ, 7/17/90, p. 76).

Ms. Jacobson's testimony differs from mine about why she attended such meetings. I have testified that Ms. Jacobson suggested to me that it would be helpful for her to be present so she would know what was going on. (AC, 4/30/90, p. 24). She testified that she was there to make sure that the charitable donor felt at home in my hectic and crowded office before I arrived or if I were called away on Senate business. (JJ, 12/3/90, pp. 86–90).

Ms. Jacobson has testified, and I confirm, that she never participated in substantive discussions in any meetings. (JJ, 12/3/90, p. 86). Moreover, Ms. Jacobson testified that she often paid no attention to the substantive discussions: "While a substantive discussion was going on, I often would get up and go make phone calls outside of the office. There's a round table that I often worked at in Senator Cranston's Whip office. While a substantive meeting was going on in another section of the same room, I would be off doing something else." (JJ, 12/3/90, p. 90).

To the best of my knowledge, Ms. Jacobson never attempted to influence an official action in any way. Neither anyone on my staff nor I made a decision of substance based on any actions by Ms. Jacobson.

B. Paragraph (a)(2)(ii)

"Paragraph (a)(2)(ii) states: Senator Cranston's fund-raiser often served as the intermediary for Mr. Keating or Mr. Grogan when they could not reach the Senator or Carolyn Jordan, the Senator's banking aide."

The Resolution's use of the word "intermediary" is misleading and unfair. The record shows, as I have just indicated, that Ms. Jacobson did not engage in any substantive negotiations or take any substantive actions. She testified that she simply passed messages along occasionally when Mr. Grogan was unable to reach me or members of my Senate staff. (JJ, 12/3/90, p. 156). Ms. Jacobson testified, "It was Jim Grogan's nature to just keep dialing until he got somebody. Again, it usually had to do with something that was going to happen and he needed to get a hold of somebody, whether it was Roy [Greenaway] or Alan [Cranston] or Carolyn [Jordan], and I would say, I'll pass it along." (JJ, 7/19/90, p. 168).[12] Ms. Jacobson also testified, ". . . At the beginning they always did call me. My understanding is that later on they often didn't call me, that they called Roy Greenaway [my Administrative Assistant] or they called Mary Lou [McNeely, my Secretary] directly or they just showed up at the office." (JJ, 7/19/90, p. 164).

C. Paragraph (a)(2)(iii)

"Paragraph (a)(2)(iii) states: Senator Cranston received several memoranda from Ms. Jacobson which evidenced her understanding that contributors were entitled to special attention and special access to official services. Senator Cranston never told her that her understanding was incorrect, nor did he inform her that such a connection between contributions and official actions was improper."

The Special Counsel focused on one memo dated January 7, 1987. (Sp. Coun. Ex. 154). It was written prior to *all* the specific donations referred to in the Committee's Resolution.

Ms. Jacobson did *not* state—as the Resolution indicates—that the individuals she mentioned in her January 7 memo were "entitled to special attention and special access to official services." She said the individuals expected "some kind of resolution" of pending matters. That is exactly what every constituent, whether a contributor or not, rightfully expects from their Senator. That is exactly what every constituent of mine gets, whether he is a contributor or not, to the best of my ability and my staff's ability. Note that Ms. Jacobson did not state that these individuals could rightfully expect a *favorable* resolution. She said they would expect "*some kind*" of resolution.

She explained the meaning and intent of this memo in her testimony. She testified that the individuals she mentioned, like all constituents, were entitled to a response from me as to what, it anything, I was going to do about their problems—not necessarily a positive response or resolution—but *some* response or resolution. (JJ, 7/19/90, pp. 99–101; 12/3/90, pp. 204–5). They may not like the response, but they like all constituents are at least entitled to be heard and to be given a decision. That is all Ms. Jacobson advocated and that is all I ever tried to provide.

Furthermore, Ms. Jacobson testified that several individuals mentioned in her January 7 memo, including Mr. Keating, did not get the results they wanted. (JJ, 12/3/90, pp. 205–6). I understand how someone with 20/20 hindsight might question the implication of Ms. Jacobson's words, but my deeds followed the *words*, not the *implications*.

Improper inferences drawn from a memo written by someone else, not by me, *must not be accepted as a substitute* for clear and convincing evidence of causal connections between my official actions and donations.

The only other memos I am aware of from Ms. Jacobson simply passed on information or contained updates on charitable donations.

Moreover, and in fundamental fairness to Ms. Jacobson, I believe that the Resolution *unfairly implies* that she lacked understanding of proper policy regarding donations and official actions. Ms. Jacobson testified that she knew there could not and must not be a quid pro quo between official actions and donations, and that my absolute firm office practice was to have nothing to do with any potential donor who sought to link a donation to official action. (JJ, 12/3/90, pp. 223–4, 239–40).

Specifically, in relation to Lincoln, Ms. Jacobson testified that neither Messrs. Keating, Grogan nor I ever indicated that *any* donations were made with any understanding that I would do *anything* in return (JJ, 12/3/90, pp. 175–6):

Q. Did Mr. Grogan ever tell you that the contributions were made with the understanding that Senator Cranston would do anything in return?

A. Absolutely not.

Q. Did anyone whom you knew to be associated with Lincoln Savings or American Continental ever tell you that any of the contributions were made with the understanding that Senator Cranston would do something in return?

A. No.

Q. Did Senator Cranston ever say to you that he thought that the contributions which you have discussed were made with an expectation that he would act in any way on behalf of Mr. Keating, or Lincoln or American Continental?

A. No.

Q. To your knowledge, did Senator Cranston do anything for or on behalf of Lincoln Savings because Mr. Keating assisted his reelection campaign?

A. No.

Q. Did he to your knowledge do anything for or on behalf of Lincoln Savings because Mr. Keating contributed money to USA Votes, Forum Institute or the Center For Participation in Democracy?

A. No.

Q. Did Mr. Keating or anyone associated with him ever tell you that a contribution would be made after Senator Cranston made an inquiry on his behalf?

A. No.

Q. Did Senator Cranston ever tell you or suggest to you that you should time any request for contributions to coincide with anything occurring before the Bank Board?

A. No. In fact, the timing of the fund-raising was something that was driven by my finance plan. If anyone was controlling the timing, I would say I was.

Q. Did Senator Cranston ever tell you to time a solicitation to Mr. Keating to coincide with any other event or events to your recollection?

A. No.[13]

The Resolution inappropriately states that Ms. Jacobson understood that donors were entitled to special access. Mr. Grogan testified that he was able to obtain my attention—in other words get access to me—before any of the charitable donations for voter registration were made by Mr. Keating. (CG, 12/15/90, p. 132).

IV—THERE ARE NO DIFFERENCES IN KIND BETWEEN MY ACTIONS AND THE ACTIONS OF SENATOR DE CONCINI, SENATOR GLENN, SENATOR MCCAIN AND SENATOR RIEGLE

There are *no differences in kind* between my actions and the actions of the other four Senators with respect to Lincoln.

Therefore there is no justification for singling me out for disciplinary action.

The Committee Statement of February 27, 1991 contains many important findings that show both similarities and differences in the actions of the five Senators. The findings include:

1. That, when considered without regard to any donation or other benefit, actions of the other four Senators and my actions did not violate any law or Senate rule.

2. That no solicitation or acceptance of any donation by the other four Senators or myself constituted a personal gift to any one of us.

3. That the other four Senators and I had a reasonable basis for contracting FHLBB personnel.

4. That the attendance of the other four Senators and my attendance at the April 2 and April 9 meetings, when considered without regard to donations, was not improper.

5. That my post-April 9, 1987 conduct and that of Senators DeConcini and Glenn when considered without regard to donations, was not improper; and in and of itself it is not improper to contact regulators after learning of a criminal referral. (DeConcini & Glenn).[14]

6. The committee found that it may appear improper but actually it is not improper for a Senator to engage in aggressive conduct with regulators especially after learning of a criminal referral. (DeConcini).

7. The Committee found, however, that it was *poor judgment* but it did not find it unethical for a Senator to arrange a lunch between Keating and Speaker Wright eight months after the Senator knew of the criminal referral. (Glenn).

8. That the solicitation and acceptance by the other four Senators and me of all donations, including those to charitable voter registration organizations, were not illegal or improper.

9. That there are no specific written standards regarding contact with federal regulators in general or on behalf of contributors in particular.

10. That it may appear improper, but the Committee did not find it improper, for a Senator to assist a constituent with regulatory problems at a time *very close* to when that constituent is raising funds for the Senator. (Glenn and Riegle).

11. By implication, that conduct that is not improper but gives rise to an appearance of impropriety does not warrant further Senate action. (Riegle and DeConcini).

12. That contacts of the other four Senators and my contacts with regulators regarding Lincoln did not cause the eventual failure of Lincoln or the thrift industry in general.

Clearly all five Senators had varying degrees of involvement in respect to Lincoln. Mr. Keating and his friends and associates contributed more political contributions to the campaigns and P.A.C.s of each of the other four Senators, who had direct control over these funds, than to mine. The totals:

Glenn, $252,200.
McCain, $110,000.
DeConcini, $85,000.
Riegle, $78,250.
Cranston, $59,000.

Although I received *less* in political contributions than any of the other Senators, it appears that I received more because of the charitable donations I raised. This is misleading and can warp an objective observer's perspective. I did not *receive* the charitable donations. I *collected* them on behalf of and passed them on to 501(c)(3) charitable organizations.

The fact that when charitable donations are counted I raised more funds from Mr. Keating than any of the other Senators should be considered in several contexts:

The total amount of charitable contributions I raised from Mr. Keating is not unusual in view of his general record of giving and loaning many more than $44 million to various causes including Mother Teresa, Convenant House, the Vincent de Paul Society and anti-pornography drives.

The Special Counsel asked why Mr. Keating, whom he characterized as extremely conservative, would donate to a Democrat such as I and to causes I espoused. F.E.C. records show that Mr. Keating has contributed very large sums to both the Democratic and Republican parties and to many candidates of both parties. Mr. Grogan testified about Mr. Keating's philosophy, "I would not characterize him as a conservative Republican and he doesn't characterize himself that way. He is much more liberal on a variety of issues." (JG, 12/12/90, p. 88).[15]

Regarding charitable contributions, I also want to note that information obtained from Senate financial disclosure forms shows that many Senators are associated in some way—surely including fund-raising in some instances—with I.R.S. approved 501(c)(3) organizations. Among them are the former Majority Leader Robert C. Byrd, now President Pro Tem of the Senate (Robert C. Byrd Scholastic Recognition Fund) and Minority Leader Robert Dole (Dole Foundation for the Employment of People with Disabilities). (AC Exhibit 80).

Coincidences in time between political contributions and official actions were found in respect to three of the other Senators:

The Committee found that Senator Riegle was helping Lincoln with its regulatory problems at the same time that Mr. Keating was raising substantial political funds for him—i.e., $78,250 raised for Senator Riegle's 1988 campaign on March 24, 1987, nine days before the April 2 meeting and after Senator Riegle's apparent involvement in discussions leading to the April 2 meeting. The Committee stated that it did not condone Senator Riegle's conduct and criticized him for "insensitivity and poor judgment"—*but* the Committee did *not* conclude that this coincidence in time between Senator Riegle's fundraising and official actions required institutional action by the full Senate. (Senate Ethics Committee Statement, 2/27/90, Riegle).

The Committee found that Mr. Keating raised $54,000 for Senator DeConcini's November, 1988, reelection, shortly before the Senator made efforts similar to mine although perhaps or "aggressive" than mine (to use the Committee's word)—to make sure the Bank Board gave appropriate consideration to the efforts to sell Lincoln.

The Committee learned that in late 1984 and early 1985 Mr. Keating and his associates made significant political contributions and raised funds for Senator Glenn's presidential campaign debt and for his Senatorial campaign. This coincided in time with actions Senator Glenn took at the suggestion of Mr. Keating regarding the direct investment rule in December, 1984, and January, 1985. Senator Glenn testified he did not know about the contributions until the summer of 1985. (Glenn, 1/4/91, pp. 187–8, 226, 255).

The Committee did not conclude that there was any causal connection between these three coincidences of receipt by Senators Riegle, DeConcini and Glenn of these political contributions in proximity of time to their official actions. How, then, could the Committee without *any* substantiating evidence conclude that there was any causal connection between my receipt—on behalf of others—of charitable and related donations and my official actions? My case, like the cases of Senators Riegle, DeConcini and Glenn, *can only involve* questions of judgment and appearances.

I believe, too, that our actions did not differ in kind from legitimate actions of our 95 colleagues. Virtually every Senator raises funds for his campaigns and renders legitimate services to his constituents, including contributors, when they need it. I have noted previously that many Senators are active in one way or another with charitable organizations and some Senators raise very substantial money for them.

V—THERE ARE NO U.S. SENATE RULES, PRECEDENTS, OR CASES IN WHICH A SENATOR HAS BEEN DISCIPLINED FOR ASSISTANCE TO A CONSTITUENT WHEN THE SENATOR RECEIVED NO PERSONAL FINANCIAL PROFIT

If the Committee believes there should be limits on a Senator's ability to perform his official duties for a contributor based upon the timing or proximity of a donation to an official act, it may recommend that change to the full Senate and allow all 100 members of this body to debate such a proposed rule.

It would be contrary to the principles of the Senate and a violation of traditional concepts of a fair play to apply such a rule to me now *in what would clearly be an ex post facto fashion.*

There is *no precedent* for the Senate disciplining a Senator for actions such as mine. The Senate *never* has determined that it is an ethics violation for a Senator to engage in legitimate constituent service on behalf of a contributor because it was—or might appear to be—close in time to a lawful contribution to the Senator's campaign or to a lawful donation to a charity that the Senator supports.

The Senate has to date rejected attempts to create Ethics Rules that would restrict the ability of its members to give their supporters the impression that they will be responsive to their needs. There is a *fundamental difference* between a Senator acting on behalf of a constituent and a Senator acting for his personal gain. It is one thing to say that a Senator should not do anything in his official capacity that appears to bring him personal gain. It is quite another to say he should not do anything in his official capacity that appears to benefit supporters or contributors. The former is a conflict of interest and a violation of public trust. The latter is not only *not* a violation of trust, but a fulfillment of it. Its appearance can seem improper only to those who distrust the system itself.

In *every* case of financial impropriety considered by the Senate throughout its history, the alleged misconduct was the use of public office for a Senator's *private* profit. The last four Senators who were disciplined by the Senate were involved in actions that resulted in *personal* gain. There has *never* been a case that has led to the disciplining of a Senator for assisting, or appearing to assist, a constituent-contributor when the Senator received no personal profit.[16]

The history of conflict of interest rules for the Senate and the House demonstrates that the evil at which all those efforts have been directed is the use of elective office for personal gain.

Senate Rule 37, the conflict of interest rule, distinguishes between personal and political benefit. It prohibits Senators and staffers from intervening with federal agencies for the purpose of furthering their financial interest or receiving compensation from a constituent. Its application is limited to agency intervention "resulting in measurable *personal* financial gain."

The Senate in 1977 rejected a proposed rule suggesting that the motive of a contributor could make a contribution improper. Senator Nelson, Chairman of a Special Committee, had proposed that Rule 35, pertaining to gifts, also should ban acceptance of anything "intended to affect the present or future performance of official duties." Senator Stevens attacked the proposal as "something no one can live up to if he is honest with himself and the American people . . . It is a standard of conduct with which one cannot comply in good faith and good conscience as a member of the U.S. Senate." Senator Nelson finally agreed, saying, "I do not think it makes sense at all, and someone who was working overtime and got tired must have written it." (pp. 144–5, Davidson Legal Counsel Report, March 1991).

The Committee acknowledges in its Statement of February 27, 1991 that the Senate presently has no specific written standards embodied in Senate rules representing contact with Federal or independent regulatory agency officials. The Committee suggests a process for establishing such standards and states that until that is accomplished "All Senators are encouraged to use House Advisory Opinion No. 1 as a source of guidance for their actions."

House Advisory Opinion No. 1 indicates that it is proper for a member to communicate with an executive or independent agency on any matter to request information or status reports; to urge prompt consideration; arrange for interviews or appointments; express judgments; call for reconsideration of an administrative response that the member believes is not supported by established law, Federal regulation or legislative intent; or perform any other service of a

similar nature in this area that is compatible with the criteria expressed in the Advisory Opinion.

The Advisory Opinion makes *absolutely no reference* to campaign contributions or charitable donations, or to the timing of campaign contributions or charitable donations solicited or received by a member who performs any of these approved and specified actions. It notes that it is a felony to seek or receive "compensation for any services rendered."

All my actions with respect to Lincoln were well within the guidelines of House Advisory Opinion No. 1.

VI—THE QUESTION OF APPEARANCES AND A SENATOR'S CONSTITUTIONAL OBLIGATION TO REPRESENT THE PUBLIC INTEREST OR THE COURSE OF JUSTICE OR EQUITY OF HIS CONSTITUENT

Senator Sanford was quoted in the Washington Post on January 11, 1991, wondering how Members of Congress can "overcome the impression" that it *appears* improper if Members accept donations from constituents for whom they intercede.

This is a perplexing problem, since our basic obligation is to the people we represent, many of whom have supported us financially or in other ways. We must do what we think is right, not just what may appear to be right.

Senators should not be at risk of discipline for violation of an appearance standard that would prevent us from intervening on behalf of constituents when intervention is appropriate. If we act only when no one will criticize us, we will not serve the people who elected us.

The fact that a constituent is a contributor, even a recent contributor, does not make it unethical—and should not make it appear unethical—for a Senator to undertake to render him legitimate help when he needs it. The fact that a constituent is a contributor does not change his need for, nor his right to, a Senator's proper and timely help.

The Special Counsel proposes extending to Senators the appearance standard in the Code of Ethics for Government Service ("CEGS") that applies to federal judges and civil servants. The Senate *never* has adopted "CEGS" as an ethical standard applicable to Senators. CEGS never has been interpreted or applied by the Senate as a standard applicable to Senators. There is *no reference to it* in any of the over 400 published Interpretative Rulings issued by the Committee. The House has referred to it, but only in cases involving personal benefit. To apply CEGS to campaign contributions or charitable donations would be inconsistent with Senate Rules 35 and 37. The definition of a "gift" in Rule 35 specifically excludes campaign contributions. the term "compensation" under Rule 37 strictly has been limited to personal benefits.

The Special Counsel overlooks fundamental differences between federal judges and civil servants and Senators. Federal judges and civil servants do not have to raise funds to stay in office. For them, an appearance of a conflict of interest cannot relate to a campaign contribution. Presumably it will relate to personal financial gain. A judge is not expected to serve the interests of the parties before him, but to judge between them in a neutral and detached manner. He should be, and should appear to be, impartial.

A Senator, on the other hand, is a servant of the constituents of his state. the Constitution requires us to *represent* our constituents. A Senator is expected to be and to appear to be responsive to the legitimate needs of his constituents, including his supporters and non-supporters alike. A Senator who attempted to function as a judge would soon be voted out of office. We also differ from federal judges and civil servants because *we are elected by the people.* We do not have life tenure. Senators *must* serve—and *must appear to serve—the proper interests of the people who support them. If they don't, their constituents won't get the help they need and deserve, and the Senators won't be reelected.*

Indeed, in 1977 the Senate Ethics Committee warned that financial disclosure was preferable to specific restrictions on conduct because "it is one thing to describe cases that could pose a disturbing conflict of interest, but quite another to formulate a rule that meets the worst cases without becoming unreasonable. A rule designed to prevent a potential conflict of interest may result instead in depriving a Senator's constituents of full representation."

In 1977, the Committee stated that an excessively restrictive rule could "do harm to the legislative process" and "cut to the heart" of a Senator's function. (Davidson, 137). I submit that the adoption by the Senate of a similarly excessive standard of appearances could deprive constituents of full representation, could harm the legislative process, and could cut to the heart of a Senator's function.

VII—CONCLUSION TO MY WRITTEN SUBMISSION

The Resolution easily could give the erroneous impression to anyone not familiar with the facts that the donations referred to were all of a political nature to some campaign or P.A.C. of mine. It omits any reference to the established and undisputed fact that 85.3% of the money—totaling $725,000—that Mr. Keating donated from early 1987 through April, 1989 was in the form of I.R.S. approved 501(c)(3) tax-deductible charitable donations to organizations that were not under my control and whose use of the money was not under my control.

In addition, Mr. Keating donated $125,000 to America Votes, an organization that raised tax-deductible charitable donations for I.R.S. approved 501(c)(3) independent, non-partisan, grass roots, voter registration organizations in approximately 20 states during 1987 and 1988.

The Resolution fails to point out that *none* of Mr. Keating's donations which are being questioned during this period was in the form of a political contribution to any campaign of mine. Only $10,000 was to a federal P.A.C. that I organized.

The Resolution ignores the important fact that *all* these donations were made *after* my 1986 reelection. An expert on voting, Curtis B. Gans, who is Director of the non-partisan, non-profit, Committee for the Study of the American Electorate, testified that registration efforts in California in 1987 and 1988 that were supported by some of the funds I raised would have had "negligible impact" on my reelection campaign four years later (had I chosen to run in 1992). "I could think of no less cost-effective way of advancing one's own interest," he testified. (Affidavit of Curtis B. Gans, Cranston Exhibit 77).

Section (a)(1) of the Resolution fails to make clear that *all* the contacts I had with regulators during this time—and at all other times—were, standing alone, not only proper, as the Committee's Statement of February 27, 1991 acknowledges, but were also de minimis. The established fact is that they were all routine status inquiries, or requests that somebody see somebody, or requests that various proposed sales of Lincoln be carefully considered. The Committee fails to make clear that in *none* of the contacts I made did I ever advocate any particular action. It fails to make clear that I *never* urged the regulators to take or refrain from any particular action.

Thus the alleged improprieties that the Resolution suggests occurred arise solely because of routine, non-substantive inquiries I made on behalf of constituents that may have been in some way proximate in time to the solicitation or receipt of charitable or related donations.

I previously have noted in statements to the Committee that my actions in respect to Mr. Keating *should not be viewed as if they occurred in a vacuum.* I pointed out that my days and my nights are characterized by constant, passionate work on the great issues of our time, like war and peace, the environment and the economy, justice, and equal rights. I cited my many responsibilities during the time these events occurred, including my leadership role in the Senate as Majority Whip; my Chairmanship of the Veterans' Affairs Committee; my membership on several other committees and the Chairmanship of busy and important subcommittees; my very active role in fund-raising for other Senators and causes as well as for my campaigns; and the fact that—along with my Senate colleague from California—I represent many more constituents (30 million) than do any other Senators. Indeed, California's Senators *represent more constituents* than any other legislator *has ever represented* in any country in the *entire history of legislative bodies.*

Constantly, I am called upon for help by my constituents. Unlike a corporation, I do not have the funds and the capacity to verify the financial status or the moral stature of each constituent who presents a problem to me. I cannot ask Dun and Bradstreet or the FBI to provide me with this information. More than 300,000 constituent requests have been handled by my staff and me in the 22 years I have been in the Senate. I deeply regret that one involving Lincoln Savings has created the problem that is before us.

A casual observer of the hearings might well have obtained the false impression that I did little else over several years except deal with regulators regarding Lincoln. This is not the case. *In the almost two year period* between the April 1987 meetings and February 8, 1989, *I had only five contacts* with Federal regulators regarding Lincoln. I had no contacts at all between May 16, 1988, when Mr. Wall requested an appointment with me to discuss legislation, and February, 1989, when the sale of Lincoln came up.

In the period from February 8 through April 14, 1989, I had only five contacts with FHLBB members Wall, Martin and White regarding *three different proposals* to sell Lincoln. All contacts that I initiated were proper status inquiries. I had a legitimate basis for making them. All these contacts related to the interests of many thousands of my constituents whose jobs and financial well-being depended upon the fate of Lincoln.

I by no means responded favorably to every request by Messrs. Keating or Grogan for me to take some official action. I already have cited my refusal to push hard for the approval of a specific sale of Lincoln. Mr. Grogan in his testimony cited several examples of requests for actions that I declined to take. (JG, 12/12/90, p. 113; 12/13/90, pp. 130, 206-7, 215, 306; 12/15/90, pp. 90, 93-4, 96-8).

Besides citing many facts that contradict the causal connection theory concerning charitable donations and my official actions, I have presented a list of inaccuracies and important facts that were omitted in the Committee documents of February 27. In all

fairness, these matters should be corrected in the final documents that are issued by the Committee.

A fair question to ask is: To what extent was the Committee influenced by these omissions of important facts, inaccuracies, and unwarranted implications in material put before it while reaching its conclusions announced on February 27, 1991?

I protest allegations of linkage, explicit or implicit, based merely on unsubstantiated and prejudicial inferences instead of demonstrable evidence.

I am convinced that a full and further review of the record, in light of my Submission, can only lead to three conclusions:

First, there is no evidence of a causal connection between any solicitation or donation and any official action on my part.

Second, that my conduct was not materially different from that of the other four Senators involved.

Third, that whatever differences there were between the actions of the four Senators and mine they were not differences of *kind*. A fair and impartial consideration of this matter can only lead one to the conclusion that the Committee's treatment of my actions *should not differ in kind* from the treatment it accorded Senators DeConcini, Glenn, McCain and Riegle. I concede that I should have recognized that fund-raising—even for charitable donations—close in time to official actions could lead to an appearance of impropriety. It was a mistake not to have given more thought to appearances.

I concede that I should have constrained more closely the individual who was working for an organization that raised charitable contributions.

I readily concede these errors, but these were errors in judgment, not in intent.

I deeply regret them.

Without any clear and convincing evidence that any official action of mine was causally linked to any donation, however, there is no reason for the Committee to recommend institutional action in my case.

Institutional action would be a tragic event in my 22 year career in the Senate. Such action is not warranted by the events that have clouded the recent past.

I love this body and I have cherished each day I have spent in it serving the people of California.

APPENDIX I—CHARLES KEATING: HIS POLITICAL PHILOSOPHY AND HIS RECORD OF PHILANTHROPIC DONATIONS

The amounts in charitable donations I raised from Mr. Keating should not seem unusual when the Committee considers his general record of giving to and support philanthropic causes.

He gave between $1 million and $5 million to Mother Teresa. He donated $2 million and loaned $40 million to Convenant House in New York. He gave $1 million to the Vincent de Paul Society in Arizona. He gave untold millions to anti-pornography campaigns and other causes.

The amounts the other four Senators and I raised from Mr. Keating in political contributions also are not unusual when the Committee takes into account his general pattern of participation in the political process.

He regularly gave and raised thousands of dollars to political campaigns and candidates including $100,000 to George Bush's "Team 100" in 1988.

The Special Counsel asked several times why Mr. Keating, whom he has characterized as an extremely conservative Republican, would contribute to a Democrat such as I and to causes in which I believed.

The Special Counsel cited an invitation to a Democratic fund-raising dinner that I enclosed in a letter to Mr. Keating. (Sp. Coun. Ex. 29). The Special Counsel said he was bewildered at the notion that Mr. Keating would want to pay to go to a dinner sponsored by Pamela Harriman, the well known Democratic fund-raiser, and Governor Dukakis. The fact is that when my invitation had arrived, Mr. Keating already had purchased a ticket to the event on his own. (JJ, 7/19/90, pp. 173-4).

Mr. Grogan testified as follows about Mr. Keating's philosophy. "Mr. Keating has a reputation that's not accurate of being a very conservative Republican. While he holds certain conservative Republican views, I would not characterize him as a conservative Republican and he doesn't characterize himself that way. He is much more liberal on a variety of domestic issues." (JG, 12/12/90, p. 88).

It is a matter of record that Mr. Keating has contributed to many Democrats and to many Republicans including Walter Mondale's presidential campaign, the Reagan-Bush campaigns, the Democratic Senatorial Campaign Committee, the Republican National Committee, the Democratic Party of California and the Republican Party of California. F.E.C. reports covering the elections of 1984, 1986, and 1988 show that he contributed to many Democratic and many Republican candidates for the Senate and the House.

APPENDIX II—MY SUGGESTED CORRECTIONS TO SEVERAL ADDITIONAL FACTUAL ERRORS IN THE COMMITTEE'S FEBRUARY 27, 1991 STATEMENT AND RESOLUTION

The Committee Statement in the section headed "Recommendation for Bi-Partisan Campaign Reform" declares that over 80% of the funds raised by the five Senators "were not disclosed funds raised . . . under the Federal Election Campaign Act. Rather, such funds were undisclosed, unregulated funds raised for independent expenditures, political party 'soft money,' and a non-federal political action committee." That statement contains two factual assertions that I believe are in error and should be corrected in the Committee's final Report.

First, no funds were raised for "independent expenditures"—funds raised independently of a campaign to help a candidate without the candidate's consent. I did not raise any. I do not believe there is any evidence that any of the other Senators raised any.

Second, I presume the reference to "political party 'soft money'" refers to the donation to the California Democratic Party. That contribution was not "undisclosed" and "unregulated". It was both disclosed and regulated in full accordance with California law.

This section of the Statement also fails to mention the category of funds that comprised most of the funds I raised: charitable donations certified as tax-deductible by the I.R.S. because they were to 501(c)(3) non-partisan organizations. This omission also should be corrected.

I did not raise any funds for a non-federal political action committee. Thus, nothing in this section as written describes my solicitations of charitable donations and related charitable donations from Mr. Keating.

FOOTNOTES

[1] Legal fees I feel obliged to cope with total more than $878,000—over $628,000 for me, and over $250,000 for others involved because of my involvement. This total amount exceeds the aggregate sum of my Senate salary for the past 10 years.

[2] I regret that I have been unable to double check to insure that detail in every citation and footnote contains no error. I am confident, however, that the substance of every reference to which I have referred is accurate.

[3] That is why I have voluntarily made my tax returns public for many years. That is why I established a blind trust during my first term in the Senate. That is why I stopped accepting honoraria.

[4] (AC Exhibit 51E).

[5] William Seidman subsequently said, referring to the Arthur Young and Alan Greenspan letters, "Those two documents, I think, were pretty extraordinary for Senators to receive in terms of convincing them of the possibility that the bureaucracy was out of control. The Senators had a couple pieces of paper that could have raised questions in their mind. You have to say this on behalf of the Senators: they got a letter from a Big 8 accounting firm, the likes of which I think had never been done before in history in which the firm on the stationery said the regulators are harassing the company, treating them unfairly, et cetera." (AC, 4/30/90, p. 105).

[6] Such status inquiry calls are certainly routine for most if not all Senators. (Senate Ethics Committee, 2/27/91, p. 3, para. 1).

[7] Back in the 70's, another large corporation, Lockheed, was facing bankruptcy. Lockheed had invested millions of dollars in my state. The livelihoods of many thousands of my constituents and their families were at risk—as was the case with Lincoln Savings. I devoted far more time and effort and made many more phone calls about Lockheed's plight than I ever did about Lincoln's as I successfully endeavored to obtain a government guaranteed loan for Lockheed.

Lockheed was not a contributor to my campaigns or causes. In fact, Lockheed had contributed to my opponent in the previous election.

[8] Again, such phone calls are certainly routine for all or most Senators. The Supreme Court has noted, "The making of appointments with government agencies is a 'legitimate errand' performed by Members of Congress for constituents." (*Brewster* 408 U.S. at 512). The Supreme Court has also judicially observed that Senators may be more aggressive than any of the five of us were in dealing with the Bank Board: "Senators are constantly in touch with the Executive Branch of the Government and with administrative agencies— they may *cajole* and *exhort* with respect to the administration of a statute." (Gravel v. U.S., 408 U.S. 606, 626, 1972).

[9] It would not have been unusual for Mr. Keating to make an unsolicited donation. The record shows that in 1985, he made an unsolicited $200,000 political contribution to Senator Glenn's Political Action Committee.

[10] In December, 1990, the San Francisco Chronicle falsely accused me of trading favors for cash. When I threatened to sue the Chronicle for libel, the Chronicle published a complete Page One retraction.

[11] Ms. Jacobson's activities should be considered in the context of Senate Rule 41 that permits Senators to appoint up to three members of their staffs who may solicit and receive campaign and political contributions. Ninety-nine Senators had done so as of November 1990. All 99 Senators appointed key staffers, including 90 Administrative Assistants, who could raise and receive contributions while simultaneously possessing the enormous power to schedule appointments; to draft, amend, advance or delay legislation; and to deal with the Executive Branch and regulatory agencies.

Thus, the Senate has ruled that there is no impropriety and no appearance of impropriety if a Senate staff who raises funds also schedules and attends meetings where substantive matters are discussed with a constituent-contributor. It seems to me that if there is a question of appearances if a fund-raiser who is not on the Senate staff attends such meetings, there is at least an equal possibility of an appearance question when the roles are commingled.

[12] I must note a separate but relevant matter that was established during the hearings involving Bill White, who had formerly been Senator Glenn's Administrative Assistant. Mr White subsequently left Senator Glenn's staff and proceeded to serve as Chairman and Treasurer of the John Glenn Committee, Inc. Mr. White received a letter dated June 6, 1984 from Mr. Grogan. The letter began as follows: "Dear Bill: Many thanks for arranging to meet with Bob Kielty regarding the JHG fundraiser in Phoenix. Also many thanks for coordinating with Dan Dougherty, et cetera, regarding the proposed FHLB regulation limiting direct investments by insured institutions." (Sp. Coun. Ex. 33); (Glenn, 1/4/91, pp 225-6).

In this instance the Committee did not feel it necessary to be critical of Senator Glenn for the fact that his fund-raiser, who was not on his Senate staff, was coordinating in substantive areas.

[13] The testimony of my Banking Committee aide, Ms. Jordan, substantiates Ms. Jacobson's. The Special Counsel asked her if it was the general philosophy of my office that donors could rightfully expect some kind of resolution of the issues that they brought to her. She replied that it was the policy of our office to respond to all inquiries. There was no mechanism for keeping staffers informed of who were contributors, nor any effort to do so in any way. Ms. Jordan certainly made no inquires about whether somebody was a contributor before she decided how to act on a particular request. Ms. Jordan testified, "It was basically our posture that we resolved everything as far as one way or another, either for or against."

The Special Counsel asked Ms. Jordan how she set priorities, how she decided which complaints got handled first and in depth. She responded, "I've never had that problem. I can't remember having a problem like that where I had to stop doing something for one person to do something for another." (CJ, 6/27/90, pp. 57–8).

[14] I have testified twice as to why I did not walk away from Lincoln's problems—and away from the problems of thousands of my California constituents—when I heard that the regulators attending the April 9 meeting had revealed that earlier on that very same day they had decided to make a criminal referral re Lincoln (without indicating that it was aimed personally at Mr. Keating), (AC, 4/30/90, pp. 180–2; 10/16/90, pp. 26–7). See also testimony from Ms. Rosemary Stewart indicating that there was no evidence of misconduct by high level management of Lincoln. (Rosemary Stewart, 1/2/91, pp. 43–7).

[15] See Appendix III for details on these points.

[16] In one case in 1873 when the Senate investigated whether Senators Harlan and Patterson had been bribed by an offer of Credit Mobile stock at preferential rates, the Senate also considered whether Senator Harlan's conduct violated ethical standards because of a related campaign contribution. A special Senate Committee apparently found that the contribution was made to influence Senator Harlan, but the Committee recommended no disciplinary action because the contribution did "not appear to have influenced his action as a Senator." (pp. 59–60, Senate Legal Counsel Memorandum to Select Committee on Ethics, March 1991).

[U.S. SENATE SELECT COMMITTEE ON ETHICS]

MY WRITTEN RESPONSE TO THE ETHICS COMMITTEE'S NOVEMBER 20, 1991, RESOLUTION FOR COMMITTEE ACTION

(Senator Alan Cranston, U.S. Senate, Washington, DC, November 20, 1991)

INTRODUCTION TO MY WRITTEN RESPONSE TO THE ETHICS COMMITTEE'S NOVEMBER 20, 1991 RESOLUTION FOR COMMITTEE ACTION (ECR)

The following constitutes my response to the details of the Resolution for Committee Action issued by the Select Committee on Ethics on November 20, 1991. There are several inaccuracies and inconsistencies that occur in this *Resolution (ECR)* that the Ethics Committee has issued.[1]

In my Written Submission of April 22, 1991, (ACS), I already had pointed out most of these inaccuracies and inconsistencies and had supplied the Ethics Committee with the relevant documented facts. Many of these facts are ignored in the Resolution. The following primarily draws upon my Written Submission (ACS) to critique the erroneous material which appears in the Resolution.

ECR 1) a) (ii)

ECR 1) *Contacts with Federal Officials Regarding Lincoln S & L*

(a) That the Committee finds that Senator Alan Cranston, personally or through Senate staff, made the following contacts with federal officials regarding Lincoln Savings and Loan (Lincoln), a subsidiary of American Continental Corporation (ACC), a company associated with Mr. Charles H. Keating, Jr.:

(ii) On March 27, 1987, following a discussion with a Lincoln lobbyist, Senator Cranston's banking aide inserted material into the *Congressional Record* relating to "direct investments" by Savings and Loans, an issue of importance to Lincoln and many other Savings and Loan institutions;

This statement is a distortion of the facts regarding a *Congressional Record* statement about an amendment to the Competitive Banking Equality Act of 1987 proposed by Senator Proxmire in the manager's amendments at the last minute which would overrule all state laws on the subject of direct investment. Senator Cranston's banking aide, Carolyn Jordan testified that she discussed the matter with Senator Proxmire's staff person who said the amendment was redundant and that they were going to remove it from the bill. Jordan went to the Senate "record" room after the Senate recessed that night and saw Senator Proxmire's statement regarding the amendment, but was unsure whether the amendment had actually been removed. Jordan testified that, "we looked at this as a State's rights issue as opposed to a direct investment issue." Jordan testified she was concerned and brought this to the attention of Senator Cranston's A.A., Roy Greenaway. Jordan testified "I did not insert [the statement myself], but I wrote the statement. * * * I gave it to our A.A. [Roy Greenaway] and he had a special assistant to sign it, and they took it to the *Congressional Record* room and that is how it was inserted." (Jordan, 12/11/90, pp. 143–4). She further testified, "It [the statement's insertion] was not done by me personally. The A.A. [Roy Greenaway] and his special assistant signed off on it, because it had to have Alan Cranston's signature on it." (Jordan, 12/11/90, p. 146).

Roy Greenaway, Senator Cranston's A.A., stated that "I am authorized to approve for inclusion in the *Congressional Record* statements which have not been personally reviewed by Senator Cranston. Although I have no specific recollection of approving this particular statement, I have no reason that I did not. Ms. Jordan's description of my actions with respect to this particular *Congressional Record* statement is consistent with my practice and with the office policy described in paragraph 4. I am confident that I would have approved the statement for inclusion in the *Congressional Record*." (Roy Greenaway Aff., 1/14/91).

There is conflicting testimony concerning the reason for the statement's inclusion. Jordan repeatedly referred to the amendment as overturning the authority of the State of California and stated she did not talk to Grogan or anybody else at Lincoln at that time although she testified that she was aware of Lincoln's position on the issue. (Jordan, 12/11/90, pp. 145, 136).

Grogan, however, testified that one of his lobbyists discovered the amendment had been slipped into the bill at the last minute and talked to Jordan about getting that removed and putting in legislative history to neutralize Senator Proxmire's statements. (Grogan, 12/14/90, pp. 146–47). Grogan, however, when confronted with Jordan's testimony stating she had acted on her own said, "I have no information that in any way makes me think that that is not absolutely the truth." (Grogan, 12/14/90, p. 149). When closely questioned, Grogan testified that whatever happened between [the Lincoln lobbyist] and Carolyn Jordan, Grogan [he was not present] and that the lobbyist had simply told him that the mission was accomplished; that they were going to get language to neutralize the Proxmire language. (Grogan, 12/13/90, p. 241).

ECR 1) a) (iii)

ECR 1) a) (iii) omits a description of my participation in the April 2, 1987 meeting with FHLBB Chairman Edwin J. Gray and Senators DeConcini, Glenn and McCain to discuss the ongoing examination of Lincoln.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 12–15 states:

"The evidence shows that I played a very minor but proper role in the April 2 meeting. I asked why the audit was taking so long and agreed with Senator Glenn that if Mr. Keating had broken any law he should be prosecuted, but if he hadn't the regulators should get off his back. (AC, 4/30/90, pp. 131, 133); (Gray, 11/27/90, p. 51). The evidence shows that my participation in the April 9 meeting was essentially limited to sticking my head in the door for a minute. (AC, 4/30/90, p. 150); (Sp. Coun. Ex. 193).

"3. *No Causal Connection:* The Committee's findings conclude that each of the five Senators had information that reasonably caused concern about the fairness of the Bank Board's examination of Lincoln and that was sufficient to justify contacting Bank Board personnel. (Committee Statement, 2/27/91, p. 1, para. 4). The Committee found that, without regard to donations or other benefits, no Senator violated any law or Senate rule by attending the April 2 and 9 meetings. (Committee Statement, 2/27/91, p. 1, para. 1).

"The evidence shows that in that point in time all five of us had good reason:

To view Mr. Keating as a highly successful and respected businessman. "All five of us also knew that:

Alan Greenspan, who is now the Chairman of the Federal Reserve, had stated in his opinion that Lincoln was solvent for the foreseeable future. (Sp. Coun. Ex. 159); (AC, 4/30/90, p. 101).

Arthur Young, one of the "Big Eight" accounting firms, had found Lincoln to be in good shape and was very critical of the regulators.[2] (Sp. Coun. Ex. 161); (AC, 4/30/90, pp. 99–100).

"I had several additional reasons to be concerned about the fairness of the Bank Board's examination of Lincoln:

Lincoln was a California-chartered Savings and Loan. Many thousands of its employees and depositors were my constituents. Their jobs and financial security were at risk.

I was aware—as perhaps the other Senators were not—that the Arthur Anderson firm, another of the "Big Eight" accountants, had found Lincoln to be in good shape and had grave questions about the performance of the regulators. (AC, 4/30/90, p. 102).

I previously had engaged a confrontation with Mr. Gray, the Chairman of the Bank Board, and had the clear impression that he was incompetent. (AC, 4/30/90, pp. 106–9).

Mr. Gray had worked in public relations for a savings and loan institution in San Diego, California, before he was appointed to chair the Bank Board. I knew he had a poor reputation in the San Diego business community. (AC, 4/30/90, p. 107).

I knew that a principal newspaper in California, the Los Angeles Times, had called for Mr. Gray's resignation from the Bank Board after the General Accounting Office found he had misused $27,000 of public funds. (*Id.*; Cranston Ex. 57); (AC, 4/30/90, p. 92).

"Thus the *evidence is overwhelming* that (a) I had many sound and official reasons to par-

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Footnotes at end of article.

ticipate in the April meetings, where I played a very minor and proper role, and (b) the donation was solicited and received weeks before I knew of the April meetings. The preponderance of the evidence shows that the donation was solicited and received before anyone even conceived of the meetings.

"There is no evidence—nor could there be—that I attended the April meeting because of the donation."

ECR 1) a) (v)

(v) In July or August of 1987, Senator Cranston called M. Danny Wall, then Chairman of the FHLBB, concerning Lincoln.

Clarification of this point is necessary. Wall did testify that I called him in July in August of 1987 regarding Lincoln. Wall testified, *however*, that I simply made "the observation that he understood that there was an examination that had been underway for in excess of a year, he understood that to be unusual—which it was; and that he urged the Board to make a decision, not in any way indicating what the Board's decision should be, but that we ought to make a decision and get on with it." (Wall, 12/4/90, 19–20). I do not have any independent recollection of this contact (Taylor Submission, 1/30/91, p. 15).

ECR 1) a) (vi)

(vi) On Nov. 12, 1986, Senator Cranston called Chairman Wall and discussed Lincoln's dispute with the San Francisco FHLB regulators.

The word, "discussed", is a distortion of the facts. *Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 16–17*, states:

"2. *Official Action:* My notes about the call to Mr. Wall establish that it was a status inquiry.[3] I asked if the end of the audit of Lincoln was in sight. Mr. Wall and I also discussed the personality problems between Lincoln and the San Francisco regulators. (Sp. Coun. Ex. 147). Mr. Wall's testimony confirmed this. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.). Mr. Wall also testified that I did not urge him to take any particular course of action. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.).

"Furthermore, there is *no* evidence that I attempted to influence the regulatory actions of Mr. Wall *or any other* regulator at any time. Every regulator who was called as a witness or in an affidavit testified that none of his or her actions were influenced by any contact from my office or from me. (Wall Affidavit, Sp. Coun. Ex. 428, p. 6, para. 9); (Rosemary Stewart, 1/2/91, pp. 10–11, 196); (Wall, 12/4/90, pp. 104, 116, 181–2, 184, 191); (Martin, 12/3/90, p. 58; Martin Affidavit, Sp. Coun. Ex. 17, para. 11); (Gray, 11/27/90, p. 97); (Patriarca, 11/27/90, p. 147); (Black, 12/6/90, pp. 29–30); (Cranston Ex. 78, Dochow Aff. Attachments A–1 at 19–20 & A–2 at 41).

"3. *No causal Connection:* If flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for anyone to donate or contribute *anything* to me in order to get me to do *anything*."

ECR 1) a) (vii)

(vii) On Jan. 20, 1988, Senator Cranston called Chairman Wall and asked him to meet with Charles Keating.

This is a distortion of the facts. *Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), p. 22 states:*

"I have testified that I called Mr. Wall on January 20, 1988 and asked him if he would be willing to see Mr. Keating. Mr. Wall responded to me that he was willing to meet with Mr. Keating but it might not be necessary because he thought the problem between Mr. Keating and the Bank Board was being worked out. During my conversation with Mr. Wall, no commitment was made to meet, nor was a firm meeting date arranged. (AC, 4/30/90, p. 249). Mr. Wall testified that he was not sure if I had asked him to meet with Mr. Keating. (Wall Test., 12/4/90, pp. 33 & 131). There is *no evidence that I even knew about the meeting* that did occur on January 28, 1988. I did not set it up. The arrangements must have been made by Messrs. Keating and Wall or their assistants.

"3. *No Causal Effect:* Once again, it flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for *anyone* to make *any* donation in order to induce me to do *anything* or to *reward* me for doing it. I made the call to Mr. Wall regarding a major California business in view of apparent regulatory excesses that were amounting to harassment. The Committee has stated: (a) Senators should and do provide such constituent services; and (b) that there were sufficient reasons to contact the Bank Board regarding Lincoln. (Senate Ethics Committee Statement, 2/27/91, p. 1, para. 4)[5]"

ECR 1) a) (vii)

(viii) On February 16, 1988, Senator Cranston called Chairman Wall and his notes indicate discussion of Lincoln.

There is evidence to the contrary regarding the subject of the call. My handwritten notes indicates a call to Wall on that date. (Cranston Ex. 173). However, in my deposition on April 30, 1990 (pp. 230–31), I replied to Special Counsel Bennett's questions regrading my notes of the 2/16/88 phone call: "I do not believe this call had anything to do with Lincoln or Keating in any way. I'm not positive of that but that is my impression from the notes."

Furthermore, there is no further reference to this call in Wall's affidavit or testimony before the Committee.

ECR 1) a) (ix)

(ix) On April 21, 1988, Senator Cranston called Chairman Wall to obtain a status report on Lincoln.

This is a *distortion* of the facts. Senator Cranston Exhibit 179 consists of my handwritten notes apparently of a phone call made on April 21, 1988 to Wall. Lincoln Savings appears to be one of several matters discussed (item 3). In my deposition on April 30, 1990 (p. 251–4), I translated the notes as follows: "April 21. I had a conversation with Wall on several matters. The notes indicate that it covered four points, only two of which related to Keating." I went on to describe the other items which involved two other institutions unrelated to Lincoln. Item three related to Lincoln and I testified that he presumed he asked Wall what was happening and Wall responded he was trying to resolve it and nothing more was said or I would have made a note. The last item related to a general FSLIC issue (recapitalization etc.) and the notes reflect that Wall had indicated that he had all views on the issue, including Keating's.

ECR 1) a) (x)

(x) On May 6, 1988, after receiving a telephone call from James Grogan, an ACC attorney, Senator Cranston's banking aide talked to FHLBB officials about the FHLBB's proposed supervisory agreement with Lincoln;

This statement is misleading and does not contain all the relevant facts. Cranston Ex. 150 is a memo from Ms. Jordan to me and Roy Greenaway, my A.A., dated May 6, 1988. It states that Ms. Jordan had received a call from Jim Grogan. Grogan told Ms. Jordan that the Board had met and decided to take enforcement action against Lincoln, including a supervisory agreement that triggered required reports to shareholders and the public, which would have an adverse effect on value of stock, etc.

Ms. Jordan's memo goes on to say that she called FHLBB and talked to Jim Boland, a special assistant to Wall and Carl Hoyle, Congressional Affairs, in a 3-way call. The memo indicates Ms. Jordan told them I was very concerned about using the supervisory approach. It describes the situation and discusses upcoming hearings in the Banking Committee on oversight of FSLIC and suggests that this issue could be raised at the time.

I stated that until I received Ms. Jordan's memo I was unaware that Grogan had called her or that Ms. Jordan had called Hoyle and told him that I was concerned about any action they proposed to take. My affidavit further states that I took no action as a result of the memorandum. (Cranston Ex. 82, 0.5). In my deposition, I said I did not recall authorizing Ms. Jordan to make these statements, but that it was consistent with my general views of the situation. (AC, 4/30/90, pp. 256–60).

ECR 1) a) (xi)

(xi) On May 16, 1988, Senator Cranston met with Chairman Wall, and Lincoln was discussed.

This point *distorts* the facts. The "discussion" was in reality a very limited status inquiry.

Initially, I did not recall discussing Lincoln at that meeting. However, after Wall testified that I had asked him when a decision would be made regarding Lincoln, I stated in my January 12, 1991 affidavit that "I recall very little about my meeting with Chairman Wall on May 16, but I believe he is correct in his testimony that when I saw him that month, we talked about a number of matters, and I inquired as to the status of the Lincoln matter. I did not complain about the Board's decision. I did not urge that the Board change or modify its decision. I did not discuss with Mr. Wall any on going negotiations between the Bank Board and Lincoln." (Cranston Ex. 82, p. 6.).

Wall supported this statement in both his affidavit and testimony. In his affidavit, he stated, "To the best of my recollection, Senator Cranston asked when a decision would be made by the Board regarding Lincoln. The Senator did not suggest a course of action that he thought the Board should take. He repeated that he understood the examination of Lincoln was still pending and he urged that it be concluded." (Wall Aff., p. 13; 12/4/90, p. 56).

ECR 1) a) (xii)

(xii) On February 8 and 9, 1989, Senator Cranston called Chairman Wall and Federal Deposit Insurance Corporation Chairman L. William Seidman concerning the proposed sale of Lincoln and, on February 8, Senator Cranston's banking aide called an FHLBB official about Lincoln;

This statement is a *distortion* of the facts. *Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 27–8* states:

"Both Mr. Wall and Mr. Martin testified that in none of my calls did I urge final approval of any sale, and that there was nothing improper about the nature of my calls. (Sp. Coun. Ex. 428, Wall Affidavit, para. 10h, 12); (Sp. Coun. Ex. 17, Martin affidavit para.

11). The Resolution fails to describe the very limited and non-advocacy nature of my calls. It also fails to note that when Messrs. Keating or Grogan asked me to push hard for the approval of a specific sale of Lincoln, I refused to do so. (AC, 5/7/90, pp. 327-8); (Wall, 12/4/90, p. 91).

"3. *No Causal Connection:* It is again absurd to suggest that a donation of *any* sort would be necessary to motivate me to help my California constituents. There is no evidence that I contacted the Bank Board regarding the potential sale of Lincoln because of any donation. I made the calls because a proper sale would resolve a situation that otherwise could have led to a financial catastrophe in my state, California, that would have financially injured countless constituents of mine."

"The Resolution ignores my true motivation for making the telephone calls between February and April, 1989, instead favoring the *inference* that the calls were motivated by a possible charitable donation that was never made. This inference ignores my legitimate motivation: to prevent financial damage to many of my constituents."

Furthermore, the report fails to clarify the nature of my banking aide's inquiry. Taylor's Post-Hearing Submission of January 30, 1991, (page 16, fn. 11) describes the call as follows: "Ms. Jordan called Mr. Dochow on February 8 to inquire about whether there was a pending application to buy Lincoln. (Cranston Ex. 78, Dochow Aff. 6). It was on this occasion that Ms. Jordan first learned that there was a dispute about whether Lincoln satisfied its net worth requirements (Jordan, 12/11/90, p. 107). Mr. Dochow testified that Ms. Jordan did not urge that the Bank Board take any particular action with respect to the sale and that he viewed Ms. Jordan's call as a proper status inquiry. (Cranston Exhibit 78 (Dochow Aff. 6))."

ECR 1) a) (xiii)

(xiii) In early April 1989, Senator Cranston called all three members of the FHLBB concerning the proposed sale of Lincoln.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 26–28 states:

"2. *Official Action:* I called Chairman Wall and Bank Board Members Roger Martin and Larry White between February and April 1989 for the sole and limited purpose of urging that careful consideration be given to three different proposed sales of Lincoln.

"Both Mr. Wall and Mr. Martin testified that in none of my calls did I urge final approval of any sale, and that there was nothing improper about the nature of my calls. (Sp. Coun. Ex. 428, Wall Affidavit, para. 10h, 12); (Sp. Coun. Ex. 17, Martin Affidavit, para. 11). The Resolution fails to describe the very limited and non-advocacy nature of my calls. It also fails to note that when Messrs. Keating or Grogan asked me to push hard for the approval of a specific sale of Lincoln, I refused to do so. (AC, 5/7/90, pp. 327-8); (Wall, 12/4/90, p. 91).

"(3) *No Causal Connection:* It is again absurd to suggest that a donation of *any* sort would be necessary to motivate me to help my California constituents. There is no evidence that I contacted the Bank Board regarding the potential sale of Lincoln because of any donation. I made the calls because a proper sale would resolve a situation that otherwise could have led to a financial catastrophe in my state, California, that would have financially injured countless constituents of mine.

"For whatever reason, none of the sales materialized. However, the concerns that motivated my calls did occur. The consequences have been catastrophic: a cost to taxpayers presently estimated by the Resolution Trust Corporation to be $2.6 billion; tragic losses of the life savings of 23,000 Californians, mostly elderly and infirm, who bought approximately $200 million in now worthless debentures at Lincoln; and the loss of many jobs in California. The Committee correctly found that my contacts with regulators and those of the other four Senators were not the cause of the eventual failure of Lincoln or the thrift industry in general. (Committee Statement, 2/27/91, p. 1, para. 5).

"The Resolution ignores my true motivation for making the telephone calls between February and April, 1989, instead favoring the *inference* that the calls were motivated by a possible charitable donation that was never made. This inference ignores my legitimate motivation: to prevent financial damage to many of my constituents.

"Here, again, unsubstantiated inferences based solely on mere coincidence of time *cannot be a substitute* for evidence of a causal connection between a solicitation and an official action."

ECR 1) c)

ECR 1) Contacts with Federal Officials Regarding Lincoln S & L

(c) The Committee further finds that, when considered in and of themselves and without regard to any contribution or other benefit, none of Senator Cranston's aforementioned activities concerning Lincoln were illegal or improper and violated no law or Senate rule.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), p. 52 states:

"The Resolution fails to make clear that *all* the contacts I had with regulators during this time—and at all other times—were, standing alone, not only proper, as the Committee's Statement of February 27, 1991 acknowledges, but were also de minimis. The established fact is that they were all routine status inquiries, or requests that somebody see somebody, or requests that various proposed sales of Lincoln be carefully considered. The Committee fails to make clear that in *none* of the contacts I made did I ever advocate any particular action. It fails to make clear that I *never* urged the regulators to take or refrain from any particular action.

"Thus the alleged improprieties that the Resolution suggests occurred arise solely because of routine, non-substantive inquiries I made on behalf of constituents that may have been in some way proximate in time to the solicitation or receipt of charitable or related donations."

ECR 2) a) (i)

ECR 2) Solicitations and Contributions

(a) The Committee finds that, prior to 1987:

(i) Mr. Keating, his associates, and friends contributed a total of $49,000 to Senator Cranston's 1984 Presidential Campaign and his 1986 Senatorial Campaign;

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), p. 40, states:

"Clearly all five Senators had varying degrees of involvement in respect to Lincoln. Mr. Keating and his friends and associates contributed more political contributions to the campaigns and P.A.C.s of each of the other four Senators, who had direct control over these funds, than to mine. The totals: Glenn, $252,200; McCain, $110,000; DeConcini, $85,000; Riegle, $78,250"; Cranston, $49,000.

ECR 2) a) (ii)

ECR 2) Solicitations and Contributions

(a) The Committee finds that, prior to 1987:

(ii) At Senator Cranston's request, Mr. Keating also caused a contribution of $85,000 to be made by ACC to the California Democratic Party get-out-the-vote campaign in the Fall of 1986.

The resolution omits to mention the bipartisan nature of Mr. Keating's donation. I state in my deposition, "Keating did contribute $85,000 to a partisan get-out-the-vote drive conducted in 1986 in California when I was running . . . I would like to point out he also gave $80,000 to the Republican party, for a get-out-the-vote drive which was harmful to me, so that was sort of a net wash." (AC, 4/30,90, p. 40).

ECR 2) a) (iii)

(iii) At the request of Senator Cranston's chief fund raiser, Lincoln also made a $300,000 line of credit available to Senator Cranston's campaign in the fall of 1986 on an expedited basis, although this line of credit was never used.

Senator Cranston's Letter to Senator Heflin, September 12, 1991. Re Response to Bennett/Helms leak, pp. 13–14 states:

"Loans or lines of credit are often taken out on an expedited basis in the closing, crisis moments of campaigns when fears develop that there will be a fatal, last-minute shortage of the cash needed for victory.

"There was no benefit to my campaign, since the line of credit was not used.

"There was *never* any intention that this line of credit was to be for my personal use or benefit, and there is *no* evidence indicating any such intention. At the time, I was totally engaged in the closing stage of a very close election, and obviously had no time or inclination to deal with my personal finances. The Finance Director for my campaign arranged the loan. She testified that the loan was solicited by her to enable the campaign to pay for last-minute media buys, if needed, and that use of funds was to be solely upon her discretion and authority. (Jacobson, deposition H, P. 87–95. Also B.H., P. 214, footnote 850). Mr. Grogan confirmed in his testimony that Ms. Jacobson solicited the loan, that he understood it to be personal to me, but that he did not know whether ultimately that was the case. (J.G., 12/14/90, p. 138–9 & Grogan, Dep. S1, p. 134–135; Also, B.H., p. 214, footnote 850). If there was ever any discussion of making the line of credit to me personally, I was not aware of it, and that would only have been discussed because those willing to consider making loans to be used for campaign purposes prefer to make them to individuals, not to incorporated campaigns where future repayments are likely to be far more difficult to obtain. In any event, the line of credit was set up to my campaign on an arms-length, purely business-like basis, and I was *required* to make my personal property available as surely."

ECR 2) b)

b) The Committee also finds that, beginning in 1987, Senator Cranston solicited contributions from Mr. Keating for several voter registration organizations with which Senator Cranston was affiliated:

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), p. 51 states:

"The Resolution easily could give the erroneous impression to anyone not familiar with the facts that the donations referred to were all of a political nature to some campaign of P.A.C. of mine. It omits any reference to the established and undisputed fact that 85.3% of the money—totaling $725,000—that Mr. Keating donated from early 1987 through April, 1989 was in the form of I.R.S.

approved 501(c)(3) tax-deductible charitable donations to organizations that were not under my control and whose use of the money was not under my control. Furthermore, I held no position in any of these organizations, nor did I serve on any of their boards.

"In addition, Mr. Keating donated $125,000 to America Votes, an organization that raised tax-deductible charitable donations for I.R.S. approved 501(c)(3) independent, nonpartisan, grass roots, voter registration organizations in approximately 20 states during 1987 and 1988.

"The Resolution fails to point out that *none* of Mr. Keatings donations which are being questioned during this period was in the form of a political contribution to any campaign of mine. Only $10,000 was to a federal P.A.C. that I organized."

ECR 2) b) (ii)

(ii) the Senator solicited $250,000 for voter registration groups on September 24, 1987, and Keating affiliated companies contributed $225,000 to the Forum Institute (a 501(c)(3) tax-exempt organization) and $25,000 to USA Votes on November 6, 1987;

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 16 & 17 states:

"1. *Donation:* The Resolution fails to make clear that these were *not* political contributions to any campaign of mine or to my P.A.C. I received no direct political benefits from the donations.

"$225,000 was in the form of a charitable donation to Forum Institute, an I.R.S. approved 501(c)(3) tax-deductible organization. Forum distributed funds to non-partisan, 501(c)(3), grass roots organizations that registered voters in approximately 20 states. (Sp. Coun. Ex. 145). I accepted the check on behalf of Forum and turned it over to Forum. I had no control over Forum or how the money was used. The independent officers and directors of Forum had that control. (Harmon Affidavit, Sp. Coun. Ex 501, para. 13).

"$25,000 was in the form of a contribution to USAVotes (formerly America Votes) to support its efforts to raise charitable donatins for I.R.S. approved 501(c)(3) nonpartisan registration groups. (Sp. Coun. Ex. 146).

"The Resolution also fails to mention that the donations were agreed to before October 6, 1987 (Sp. Coun. Ex. 182), more than a month prior to my status inquiry call to Mr. Wall."

ECR 2) b) (iii)

(iii) the Senator discussed the Center for Participation in Democracy (a 501(c)(3) tax-exempt organization) with Mr. Keating on January 8, 1988, and ACC donated $400,000 to the Center for Participation in Democracy and $100,000 to the Forum Institute on February 10, 1988;

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 19–23 states:

"1. *Donation:* The Resolution incorrectly insinuates that (a) in January, 1988, Mr. Keating offered to make an additional charitable donation in connection with his asking me to set up a meeting for him to meet with Mr. Wall; and (b) based on my setting up the meeting, Mr. Keating made charitable donations in February. The Resolution's insinuation is unfair and inaccurate and cannot be substantiated in any way.

"There is *no* clear and convincing evidence that Mr. Keating offered to make an additional donation in January, 1988.

"Mr. Keating did make two charitable donations to voter registration groups on February 10, 1988 in Phoenix. The Resolution omits the fact that these were *two* I.R.S. approved charitable, tax-deductible donations to 501(c)(3) organizations for non-partisan, voter participation efforts. One was to Forum Institute, an organization I've already described. The other was to The Center for Participation in Democracy, that engaged in and supported non-partisan registration drives in several states. *Neither* of these two organizations, nor the use of money, was under my control.

"Regarding this period, there is considerable testimony about a dinner I attended in January with Messrs. Keating, Grogan, and others. Mr. Grogan testified that he recalls no discussion of fund-raising at the dinner. (JG, 12/14/90, p. 166; 12/13/90, p. 24 & p. 265). My son, Kim Cranston, who was present, testified that he recalls no specific offer of support by Mr. Keating. (KC, 6/28/90, p. 15). I testified similarly that (a) I did not solicit any funds at the dinner, (b) that I did not recall the discussion of any specific funds, and (c) that Mr. Keating may have indicated in a *vague* way that he would continue to support registration efforts. (AC, 4/30/90, p. 191; 10/16/90, p. 87).

"Mr. Grogan testified that he was not aware of any solicitation that preceded my February 10 visit to Phoenix. (JG, 12/13/90, pp. 261–2).

"My visit to Phoenix had been in the works since at least September of the previous year. (JJ, 12/3/90, pp. 164–6). Messrs. Keating and Grogan had a long standing policy of inviting members of Congress, their staffs, and others to visit Phoenix to see the Lincoln/American Continental Corporation operation first hand. Many Congressman and staff members have visited his company in Phoenix. Mr. Grogan testified that he had invited me to visit Phoenix several times. (JG, 12/14/90, pp. 169–70; 12/15/90, pp. 119–20). I had wanted to visit to see for myself the type of operation Mr. Keating was running. (AC, 4/30/90, p. 184). This was the first time that my schedule permitted this trip. (JJ, 7/19/90, p. 167); (JG, 12/13/90, p. 17). Ergo, this trip *was totally coincidental* to the Wall/Keating meeting. It *had no connection* with the Wall/Keating meeting.

"It is also equally coincidental that the trip finally occurred at the beginning of a new year, and thus coincided with the timing implicit to Ms. Jacobson's practice of seeking contributions from individuals twice in a given year—early and late. (JJ, 12/2/90, p. 161). Ms. Jacobson, in her capacity as a part-time USAVotes employee, had written me a memo dated February 4, 1988, stating that the main goal concerning Mr. Keating was to receive a charitable donation as soon as possible so that he could be asked for an additional donation in the fall. (Sp. Coun. Ex. 269). She testified that the timing of solicitations of donations was largely driven by her own timetable and that charitable giving is based on an annual cycle. (JJ, 12/3/90, pp. 176, 219).

"By happenstance, this trip to Phoenix was also consistent with my practice of going to visit potential donors—rather than inviting them to visit me—to get help for the registration efforts. (AC, 10/16/90, p. 87); (JJ, 12/3/90, p. 143).

"2. *Official Action:* There is *no evidence* that Mr. Keating committed to make a specific donation in connection with asking me to set up an appointment with Chairman Wall to see him.

"The evidence shows only that Ms. Jacobson sent me a memo dated January 18, 1988 relaying a request to her from Mr. Grogan that I help schedule a meeting between Messrs. Keating and Wall. (Sp. Coun. Ex. 172).

"I have testified that I called Mr. Wall on January 20, 1988 and asked him if he would be willing to see Mr. Keating. Mr. Wall responded to me that he was willing to meet with Mr. Keating but it might not be necessary because he thought the problem between Mr. Keating and the Bank Board was being worked out. During my conversation with Mr. Wall, no commitment was made to meet, nor was a firm meeting date arranged. (AC, 4/30/90, p. 249). Mr. Wall testified that he was not sure if I had asked him to meet with Mr. Keating. (Wall Test., 12/4/90, pp. 33 & 131). There is no *evidence that I even knew about the meeting* that did occur on January 28, 1988. I did not set it up. The arrangements must have been made by Messrs. Keating and Wall or their assistants.

"3. *No Causal Effect:* Once again, it flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for *anyone* to make *any* donation in order to induce me to do *anything* or to *reward* me for doing it. I made the call to Mr. Wall regarding a major California business in view of apparent regulatory excesses that were accounting to harassment. The Committee has stated: (a) Senators should and do provide such constituent services; and (b) that there were sufficient reasons to contact the Bank Board regarding Lincoln. (Senate Ethics Committee Statement, 2/27/91, p. 1, para. 4).[6]

"There is no evidence of a causal connection between my January 20, 1988 telephone call and the charitable donations. There is no specific evidence that there was even a solicitation of Mr. Keating or a discussion of any donation prior to the February 10, 1988 trip.[7] In fact, for six months there had been efforts to schedule a trip to Phoenix that finally occurred in February, 1988 and resulted in the receipt of charitable donations. *It is pure coincidence* that the trip finally was scheduled and the donations were received three weeks after my telephone call to Mr. Wall.

"Coincidence in time and unsubstantiated inferences about proper inquiries such as my telephone call and receipt of charitable donations on a trip that had been in the making for many months cannot properly substitute for the lack of clear and convincing evidence of improper linkage, particularly where there is factual and convincing evidence that Mr. Keating *did not* ask me to set up a meeting in connection with a solicitation of a donation of any type."

ECR 2) b) (iv)

(iv) In early 1989, the Senator or his chief fund raiser discussed an additional voter registration contribution with either Keating or ACC attorney James Grogan, but no further contributions were made to voter registration organizations.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 24–30 states:

"1. *Donation:* The Resolution fails once again to point out that this was a solicitation of an I.R.S. approved 501(c)(3) charitable tax-deductible donation, the use of which I did not control. It was *not* a solicitation of political contributions for my benefit. The Resolution accurately states that this donation was never made.

"The Resolution's description of [his chief fund raiser], Ms. Jacobson is misleading. In early 1987, she directed the fund-raising staff of the Democratic Senatorial Campaign

Committee. At the time in question, early 1989 (and for more than a year before that) she was spending 50% of her time as a consultant to the Democratic Senatorial Campaign Committee; 25% as a consultant to a P.A.C. I founded (Committee for a Democratic Consensus); and 25% as a consultant under contract to USAVotes to raise charitable donations for registration efforts.

"Mr. Rob Stein, the Executive Director of USAVotes, was in charge of its over-all operations. I was one of three co-chairmen of USAVotes. I was not the direct supervisor of Ms. Jacobson in her capacity as a part-time employee of USAVotes, nor was I the direct supervisor of any other USAVotes employees.

"There is conflicting testimony concerning who solicited Lincoln at this time. I have testified that I do not recall discussing a donation with Messrs. Keating, Grogan or anybody during this period. (AC, 10/16/90, p. 68; 5/17/90, p. 299). I do not believe such a discussion ever took place. Mr. Grogan, when asked whether anybody on my staff or I solicited a donation from him or Mr. Keating during this period, testified that Ms. Jacobson, not I, discussed a donation with him. (JG, 12/14/90, pp. 179–80). Ms. Jacobson's recollection was that I solicited Mr. Keating during the period. (JJ, 12/3/90, pp. 167–8).

"I believe the following shows that Ms. Jacobson initiated the solicitation and that she did so without my knowledge.

"A memorandum from Joy Jacobson to me and to Rob Stein, the Executive Director of USAVotes, dated March 1, 1989, written on her home computer, shows that I did not make the solicitation and illustrates the mechanics of how the staff of USAVotes and I worked to solicit charitable donations. (Sp. Coun. Ex. 171). It was Ms. Jacobson's job to come up with the names of people, foundations and organizations which she thought would be potential donors. She would write a memorandum with the potential donors' names, suggestions as to who should contact them, and the amounts to be requested. When I reviewed it, I would look down the list for the names suggested for me. I would systematically try to call most, but not necessarily all, of the names suggested to me. When my part of the list was complete, I would hand it back with my notes about the calls to my secretary. She would report these results back to Ms. Jacobson.

"There are 18 names of potential donors on the March 1, 1989 memo. My handwritten notes or my secretary's notes appear under 12 of those names—only those that were proposed as my assignments.

"It is clear that Ms. Jacobson assigned herself three names on the first page: AFSCME, Dick Darling, and Charlie Keating. After Mr. Keating's name these words are typed in the memo: 'Joy is talking with Jim Grogan. 100,000 wherever it's needed.'

"This evidence corroborates Mr. Grogan's testimony that Ms. Jacobson, not I made this solicitation. It indicates that her memory was incorrect when she testified that I solicited Mr. Keating. It shows that on the date of the memo, March 1, 1989, she had already discussed a $100,000 donation with Mr. Grogan.

"Ms. Jacobson's solicitation of Mr. Grogan is consistent with her explanation in her testimony 'that the first group you go back to [at the beginning of each year is] your past donors and try to renew them.' (JJ, 12/3/90, p. 161). Her solicitation of Mr. Grogan on her own is further evidenced by Ms. Jacobson's statement that 'the timing of the fund raising was something that was driven by my finance plan. If anyone was controlling the timing, I would say I was.' (JJ, 12/3/90, p. 176). She also stated that I never suggested to her to time any request for a donation to coincide with anything before the Bank Board or with any other event or events. (JJ, 12/3/90, pp. 175–6).

"2. *Official Action:* The record shows that, working on an entirely different track from Ms. Jacobson, I called Chairman Wall and Bank Board Members Roger Martin and Larry White between February and April 1989 for the sole and limited purpose of urging that careful consideration be given to three different proposed sales of Lincoln.

"Both Mr. Wall and Mr. Martin testified that in none of my calls did I urge final approval of any sale, and that there was nothing improper about the nature of my calls. (Sp. Coun. Ex. 428, Wall Affidavit, para. 10h, 12); (Sp. Coun. Ex. 17, Martin Affidavit, para. 11). The Resolution fails to describe the very limited and non-advocacy nature of my calls. It also fails to note that when Messrs. Keating or Grogan asked me to push hard for the approval of a specific sale of Lincoln, I refused to do so. (AC, 5/7/90, pp. 327–8); (Wall, 12/4/90, p. 91).

"3. *No Causal Connection:* It is again absurd to suggest that a donation of *any* sort would be necessary to motivate me to help my California constituents. There is no evidence that I contacted the Bank Board regarding the potential sale of Lincoln because of any donation. I made the calls because a proper sale would resolve a situation that otherwise could have led to a financial catastrophe in my state, California, that would have financially injured countless constitutents of mine.

"For whatever reason, none of the sales materialized. However, the concerns that motivated my calls did occur. The consequences have been catastrophic: a cost to taxpayers presently estimated by the Resolution Trust Corporation to be $2.6 billion; tragic losses of the life savings of 23,000 Californians, mostly elderly and infirm, who brought approximately $200 million in now worthless debentures at Lincoln; and the loss of many jobs in California. The Committee correctly found that my contacts with regulators and those of the other four Senators were not the cause of the eventual failure of Lincoln or the thrift industry in general. (Committee Statement, 2/27/91, p. 1, para. 5).

"The Resolution ignores my true motivation for making the telephone calls between February and April, 1989, instead favoring the *inference* that the calls were motivated by a possible charitable donation that was never made. This inference ignores my legitimate motivation: to prevent financial damage to many of my constituents.

"In response to the inference I point to the clear and convincing evidence that (a) I did not solicit a charitable donation, and that (b) I did not know that Ms. Jacobson had made a solicitation until I read her memo of *March 1, 1989*. Once I knew, the knowledge had no effect on my conduct.

"Ms. Jacobson testified that she was not aware that Messrs. Keating or Grogan were talking to me about the sale, nor that I was being asked to do anything about it. (JJ, 7/19/90, p. 179).

"*There is absolutely no evidence* of any causal connection between (a) Ms. Jacobson's solicitation, and (b) my telephone calls in 1989 to regulators regarding possible sales of Lincoln. Here, again, unsubstantiated inferences based solely on more coincidence of time *cannot be a substitute* for evidence of a causal connection between a solicitation and an official action.

"The *fair inference* from the record is that Ms. Jacobson was on one track following up according to her standard practice with one of the few established contributors whom she solicited personally and regularly at the beginning of each year. Meanwhile, I was on another track taking very limited official actions contacting regulators regarding the possible sale of Lincoln—actions for which there was clear and independent constituent related justification. Senator DeConcini made the same type of inquiries for similar reasons.

"I remind the Committee again of Mr. Grogan's response when my attorney asked him the following question: 'Was there any suggestion, either by word or by body language, or by raised eyebrow, that Senator Cranston's interest in Lincoln Savings' problems was tied to Mr. Keatings support of the non-profit voter registration efforts?' Mr. Grogan replied. 'Never.' (JG, 12/15/90, p. 132).

"The Special Counsel has cited no evidence that Mr. Keating authorized donations only on condition that I would help him, or because I had helped him. He cited no evidence that I agreed to help only if Mr. Keating contributed.

ECR 3)

ECR 3) *Linkage between Official Actions and Contributions* The Committee finds that, in and of themselves, none of the foregoing actions of Senator Cranston violated any law or Senate Rule. The Committee further finds by clear and convincing evidence that, based upon the totality of the circumstances, Senator Cranston engaged in an impermissible pattern of conduct in which fund raising and official activities were substantially linked in connection with Mr. Keating and Lincoln.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 3 & 4 states:

"I will show that there is *no direct evidence* of any such causal link. I will cite clear and convincing evidence that there were other causes—very legitimate causes—for my official actions.

"The Resolution *infers* a causal connection from the proximity in time between the charitable donations and the official actions. Proximity in time is *not* clear and convincing evidence that the charitable donations caused my official action. The Resolution's *inference* of a causal connection cannot survive dispassionate, reasoned analysis. It cannot be a substitute for clear and convincing evidence. The inference is particularly inappropriate and unfair given that my conduct was *not different in kind*, as I will show, from that of other Senators who have been under inquiry. The Resolution did not draw such adverse inferences against them.

"In retrospect, I can see that the proximity in time between the charitable donations and the official actions could lead to an appearance of impropriety where no impropriety existed. I wish I had foreseen this development—I have always endeavored to avoid appearances or actions that could reflect adversely upon the Senate or myself.[9]

"I acknowledge and I accept the consequences of an appearance of impropriety due to proximity of time.

"However, since timing and appearances did not warrant institutional action in the cases of the other Senators, it should not in my case.

"The Senate has never set standards *of any kind* governing the timing of contributions of any kind in relationship to legitimate constituent services. I fully recognize that if a Senator engages in conduct that is inimical to generally accepted and understood stand-

ards and values, the Senate has an obligation to find that Senator guilty of improper behavior, although his conduct does not violate a specific law or Senate Rule. There is no evidence that I engaged in any improper conduct.

"Without clear and convincing evidence of actual impropriety, there is no justification for subjecting me to disciplinary action. There is *no precedent* for the Senate disciplining a Senator for actions such as mine. The Senate has *never* determined that it is an ethics violation for a Senator to engage in legitimate constituent service on behalf of a contributor because it was—or might appear to be—close in time to a lawful donation to the Senator's campaign or to a charity the Senator supports. To do so now would be contrary to the principles of the Senate and a violation of traditional concepts of fair play by proceeding in an *ex post facto* fashion.

"In every case of financial impropriety considered by the Senate throughout its history, the alleged misconduct was the use of public office for a Senator's *private* profit. Neither any member of my family nor I received any compensation or personally benefited in any way from these charitable contributions. I had no financial interest in Lincoln Savings, its parent, or affiliates. I received no income from it."

ECR 3) a) (i)

ECR 3) *Linkage between Official Actions and Contributions* The Committee finds that, in and of themselves, none of the foregoing actions of Senator Cranston violated any law or Senate Rule. The Committee further finds by clear and convincing evidence that, based upon the totality of the circumstances, Senator Cranston engaged in an impermissible patter of conduct in which fund raising and official activities were substantially linked in time in connection with Mr. Keating and Lincoln.

a) From early 1987 through April 1989, Senator Cranston personally or through Senate staff contacted the FHLBB on behalf of Lincoln during a period when he was soliciting and accepting substantial contributions from Mr. Keating or his affiliates, to wit:

(i) As a result of a solicitation from Senator Cranston in early 1987, Mr. Keating contributed $100,000 to America Votes on March 3, 1987 near the time when Senator Cranston participated in the April 2 and April 9, 1987 meetings with FHLBB Chairman Edwin J. Gray and the San Francisco regulators.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 11–15 states:

"1. *Donation:* The Resolution accurately notes that a donation was made on March 3, 1987, to America Votes. (Sp. Coun. Ex. 159). America Votes (later known as USAVotes) raised tax-deductible charitable donations for I.R.S. approved 501(c)(3) independent, non-partisan, grass roots, voter registration organizations in approximately 20 states during 1987 and 1988.

"2. *Official Action:* The resolution is inaccurate and very misleading in stating that this donation was made during the period leading to my participation in the April 2 and April 9 meetings.

"The evidence is undisputed that the donation was discussed, solicited and committed on or before *February 24, 1987*. (Stein Affidavit, Sp. Coun. Ex., 458, para. 14); (AC, 4/30/90, p. 119). The donation check was dated *March 3, 1987*. (Sp. Coun. Ex. 159). The evidence shows that I knew nothing about the proposed meetings before the *second half of March*, and perhaps not until the *last week* in March. (JG, 12/15/90, p. 88); (AC, 4/30/90, p. 119). Furthermore, the preponderance of evidence shows that the meetings first were conceived *after* the donation was solicited and received. (Gray, 2/23/90, p. 15; 11/29/90, p. 64); (Grogan, 12/12/90, pp. 56–58, 208); (Riegle, 1/7/91, pp. 29–32, 46–9, 51–55, 101–2, 163); (DeConcini, 1/9/91, pp. 45–6, 49, 51–2, 60–63, 199–200, 203, 209); (McCain, 1/4/91, pp. 27–21, 26, 111, 163–4); (Glenn, 1/4/91, pp. 240–47, 193).

"The evidence shows that the April 2 meeting date was not set until a few days prior to the event. (Gray, 2/23/90, p. 15). The evidence shows that the second meeting on April 9 grew out of the April 2 meeting. The evidence shows that I played a very minor but proper role in the April 2 meeting. I asked why the audit was taking so long and agreed with Senator Glenn that if Mr. Keating had broken any law he should be prosecuted, but if he hadn't the regulators should get off his back. (AC, 4/30/90, pp. 131, 133); (Gray, 11/27/90, p. 51). The evidence shows that my participation in the April 9 meeting was essentially limited to sticking my head in the door for a minute. (AC, 4/30/90, p. 150); (Sp. Coun. Ex. 193).

"3. *No Causal Connection:* The Committee's findings conclude that each of the five Senators had information that reasonably caused concern about the fairness of the Bank Board's examination of Lincoln and that was sufficient to justify contacting Bank Board personnel. (Committee Statement, 2/27/91, p. 1, para. 4). The Committee found that, without regard to donations or other benefits, no Senator violated any law or Senate rule by attending the April 2 and 9 meetings. (Committee Statement, 2/27/91, p. 1, para. 1).

"The evidence shows that in that point in time all five of us had good reason:

To view Mr. Keating as a highly successful and respected businessman. "All five of us also knew that:

Alan Greenspan, who is now the Chairman of the Federal Reserve, had stated in his opinion that Lincoln was solvent for the foreseeable future. (Sp. Coun. Ex. 159); (AC, 4/30/90, p. 101).

Arthur Young, one of the "Big Eight" accounting firms, had found Lincoln to be in good shape and was very critical of the regulators.[10] (Sp. Coun. Ex. 161); (AC, 4/30/90, pp. 99–100).

"I had several additional reasons to be concerned about the fairness of the Bank Board's examination of Lincoln:

Lincoln was a California-chartered Savings and Loan. Many thousands of its employees and depositors were my constituents. Their jobs and financial security were at risk.

I was aware—as perhaps the other Senators were not—that the Arthur Anderson firm, another of the "Big Eight" accountants, had found Lincoln to be in good shape and had grave questions about the performance of the regulators. (AC, 4/30/90, p. 102).

I previously had engaged in a confrontation with Mr. Gray, the Chairman of the Bank Board, and had the clear impression that he was incompetent. (AC, 4/30/90, pp. 106–9).

Mr. Gray had worked in public relations for a savings and loan institution in San Diego, California, before he was appointed to chair the Bank Board. I knew he had a poor reputation in San Diego business community. (AC, 4/30/90, p. 107).

I knew that a principal newspaper in California, the Los Angeles Times, had called for Mr. Gray's resignation from the Bank Board after the General Accounting Office found he had misused $27,000 of public funds. (*Id.*; Cranston Ex. 57); (AC, 4/30/90, p. 92).

"Thus the *evidence is overwhelming* That (a) I had many sound and official reasons to participate in the April meetings, where I played a very minor and proper role, and (b) the donation was solicited and received weeks before I knew of the April meetings. The preponderance of the evidence shows that the donation was solicited and received before *anyone* even conceived of the meetings.

"There is no evidence—nor could there be—that I attended the April meetings because of the donation."

ECR 3) a) (ii)

(ii) Before October 6, 1987, Senator Cranston solicited and received a commitment from Mr. Keating for contributions in the amount of $250,000 for two voter registration groups, which were delivered to the Senator personally by Mr. Keating's employee James Grogan on November 6, 1987. When the contributions were delivered, Mr. Grogan and Senator Cranston called Mr. Keating, who asked if the Senator would contact new FHLBB Chairman M. Danny Wall about Lincoln. Senator Cranston agreed to do so, and made the call six days later.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 16–19 states:

"1. *Donation:* The Resolution omits any description of the donations, and fails to make clear that these were *not* political contributions to any campaign of mine or to my P.A.C. I received no direct political benefits from the donations.

"$225,000 was in the form of a charitable donation to Forum Institute, an I.R.S. approved 501(c)(3) tax-deductible organization. Forum distributed funds to non-partisan, 501(c)(3), grass roots organizations that registered voters in approximately 20 states. (Sp. Coun. Ex. 145). I accepted the check on behalf of Forum and turned it over to Forum. I had no control over Forum or how the money was used. The independent officers and directors of Forum had that control. (Harmon Aff., Sp. Coun. Ex. 501, para. 13).

"$25,000 was in the form of a contribution to USAVotes (formerly America Votes) to support its efforts to raise charitable donations for I.R.S. approved 501(c)(3) non-partisan registration groups. (Sp. Coun. Ex. 146).

"The Resolution also fails to mention that the donations were agreed to before October 6, 1987 (Sp. Coun. Ex. 182), more than a month prior to my status inquiry call to Mr. Wall.

"2. *Offical Action:* My notes about the call to Mr. Wall establish that it was a status inquiry.[11] I asked if the end of the audit of Lincoln was in sight. Mr. Wall and I also discussed the personality problems between Lincoln and the San Francisco regulators. (Sp. Coun. Ex. 147). Mr. Wall's testimony confirmed this. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.). Mr. Wall also testified that I did not urge him to take any particular course of action. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.).

"Furthermore, there is *no* evidence that I attempted to influence the regulatory sections of Mr. Wall *or any other* regulator at any time. Every regulator who was called as a witness or in an affidavit testified that none of his or her actions were influenced by any contact from my office or from me. (Wall Affidavit, Sp. Coun. Ex. 428, p. 6, para. 9); (Rosemary Stewart, 1/2/91, pp. 110–11, 196); (Wall 12/4/90, pp. 104, 116,181–2, 184, 191); (Martin, 12/3/90, p. 58; Martin Affidavit, Sp. Coun. Ex. 17, para. 11); (Gray, 11/27/90, p. 97); (Patriarca, 11/27/90, p. 147); (Black, 12/6/90, pp.

29–30); (Cranston Ex. 78, Dochow Aff. Attachments A–1 at 19–20 & A–2 at 41).

"3. *No Causal Connection:* It flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for anyone to donate or contribute *anything* to me in order to get me to do *anything*.[12]

"The routine status call that I made to Mr. Wall on November 12 was not motivated by the personal concerns of Mr. Keating. The jobs and financial security of thousands of my California constituents were at stake. I made the call for the same reason that I attended the April 2, 1987 meeting—because I believed it was necessary and proper that I do so on behalf of my many constituents who had stakes in Lincoln.

"The Resolution is incorrect in concluding that Mr. Keating asked me to contact Mr. Wall when I was on the phone with him in Mr. Grogan's presence. At best, there is conflicting testimony on this point. (AC, 4/30/90, pp. 188 & 190); (JG, 12/14/90, p. 162). I do not recall a request from Mr. Keating on November 6 that I call Mr. Wall. *Nor* do I recall that my November 12 call to Mr. Wall was the result of a request from Messrs. Keating or Grogan.

"The Resolution implies that there was a causal connection between the receipt of the donations and my decision to call Mr. Wall on November 12. There is *no* evidence to support such a conclusion.

"Furthermore, Mr. Grogan testified that there was never "any suggestion, either by word or by body language, or by a raised eyebrow" that my interest in Lincoln's problems was tied to Mr. Keating's support of non-profit voter registration efforts. (JG, 12/15/90, p. 132). Mr. Grogan also testified, "There was never an occasion where Mr. Keating asked Senator Cranston to do something and Senator Cranston said, 'only if you raise funds for me.' There was never an occasion where Mr. Keating said, 'If you do this for me, I will raise X amount of dollars for you.'" He testified that there was never "even the suggestion" that fund-raising and official actions were connected in any way. (JG, 12/12/90, pp. 185–8). I repeatedly have testified that there was no connection between Mr. Keating's donations and my decisions to contract the regulators regarding Lincoln. (AC, 4/30/90, p. 95)."

ECR 3) a) (iii)

(iii) In January 1988, Mr. Keating offered to make an additional contribution to voter registration groups affilated with Senator Cranston and asked Senator Cranston to set up a meeting for him with Chairman Wall. Senator Cranston did so on January 20, 1988. On February 10, 1988 Senator Cranston received checks totaling $500,000 for voter registration groups.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 19–23 states:

"1. *Donation:* The Resolution incorrectly insinuates that (a) in January, 1988, Mr. Keating offered to make an additional charitable donation in connection with his asking me to set up a meeting for him to meet with Mr. Wall; and (b) based on my setting up the meeting, Mr. Keating made charitable donations in February. The Resolution's insinuation is unfair and inaccurate and cannot be substantiated in any way.

"There is *no* clear and convincing evidence that Mr. Keating offered to make an additional donation in January, 1988.

"Mr. Keating did make two charitable donations to voter registration groups on February 10, 1988 in Phoenix. The Resolution omits the fact that these were two I.R.S. approved charitable, tax-deductible donations to 501(c)(3) organizations for non-partisan, voter participation efforts. One was to Forum Institute, an organization I've already described. The other was to The Center for Participation in Democracy, that engaged in and supported non-partisan registration drives in several states. *Neither* of these two organizations, nor the use of the money, was under my control.

"Regarding this period, there is considerable testimony about a dinner I attended in January with Messrs. Keating, Grogan, and others. Mr. Grogan testified that he recalls no discussion of fund-raising at the dinner. (JG, 12/14/90, p. 166; 12/13/90, p. 24 & p. 265). My son, Kim Cranston, who was present, testified that he recalls no specific offer of support by Mr. Keating. (KC, 6/28/90, p. 15). I testified similarly that (a) I did not solicit any funds at the dinner, (b) that I did not recall the discussion of any specific funds, and (c) that Mr. Keating may have indicated in a *vague* way that he would continue to support registration efforts. (AC, 4/30/90, p. 191; 10/16/90, p. 87).

Mr. Grogan testified that he was not aware of any solicitation that preceded my February 10 visit to Phoenix. (JG, 12/13/90, pp. 261–2).

"My visit to phoenix had been in the works since at least September of the previous year. (JJ, 12/3/90, pp. 164–6). Messrs. Keating and Grogan had a long standing policy of inviting members of Congress, their staffs, and others to visit Phoenix to see the Lincoln/American Continental Corporation operation first hand. Many Congressmen and staff members have visited his company in Phoenix. Mr. Grogan testified that he had invited me to visit Phoenix several times. (JG, 12/14/90, pp. 169–70; 12/15/90, pp. 119–20). I had wanted to visit to see for myself the type of operation Mr. Keating was running. (AC, 4/30/90, p. 184). This was the first time that my schedule permitted this trip. (JJ, 7/19/90, p. 167); (JG, 12/13/90, p. 17). Ergo, this trip *was totally coincidental* to the Wall/Keating meeting. It *has no connection* with the Wall/Keating meeting.

"It is also equally coincidental that this trip finally occurred at the beginning of a new year, and thus coincided with the timing implicit to Ms. Jacobson's practice of seeking contributions from individuals twice in a given year—early and late. (JJ, 12/2/90, p. 161). Ms. Jacobson, in her capacity as a part-time USAVotes employee, had written me a memo dated February 4, 1988, stating that the main goal concerning Mr. Keating was to receive a charitable donation as soon as possible so that he could be asked for an additional donation in the fall. (Sp. Coun. Ex. 269). She testified that the timing of solicitations of donations was largely driven by her own timetable and that charitable giving is based on an annual cycle. (JJ, 12/3/90, pp. 176, 219).

"By happenstance, this trip to Phoenix was also consistent with my practice of going to visit potential donors—rather than inviting them to visit me—to get help for the registration efforts. (AC, 10/16/90, p. 87); (JJ, 12/3/90, p. 143).

"2. *Official Action:* There is *no evidence* that Mr. Keating committed to make a specific donation in connection with asking me to set up an appointment with Chairman Wall to see him.

"The evidence shows only that Ms. Jacobson sent me a memo dated January 18, 1988 relaying a request to her from Mr. Grogan that I help schedule a meeting between Messrs. Keating and Wall. (Sp. Coun. Ex. 172).

"I have testified that I called Mr. Wall on January 20, 1988 and asked him if he would be willing to see Mr. Keating. Mr. Wall responded to me that he was willing to meet with Mr. Keating but it might not be necessary because he thought the problem between Mr. Keating and the Bank Board was being worked out. During my conversation with Mr. Wall, no commitment was made to meet, nor was a firm meeting date arranged. (AC, 4/30/90, p. 249). Mr. Wall testified that he was not sure if I had asked him to meet with Mr. Keating. (Wall Test., 12/4/90, pp. 33 & 131). There is *no evidence that I even knew about the meeting* that did occur on January 28, 1988. I did not set it up. The arrangements must have been made by Messrs. Keating and Wall or their assistants.

"3. *No Causal Effect:* Once again, it flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for *anyone* to make *any* donation in order to induce me to do *anything* or to *reward* me for doing it. I made the call to Mr. Wall regarding a major California business in view of apparent regulatory excesses that were amounting to harassment. The Committee has stated: (a) Senators should and do provide such constituent services; and (b) that there were sufficient reasons to contact the bank Board regarding Lincoln. (Senate Ethics Committee Statement, 2/27/91, p. 1, para. 4).[13]

"There is no evidence of a causal connection between my January 20, 1988 telephone call and the charitable donations. There is no specific evidence that there was even a solicitation of Mr. Keating or a discussion of any donation prior to the February 10, 1988 trip.[14] In fact, for six months there had been efforts to schedule a trip to Phoenix that finally occurred in February, 1988 and resulted in the receipt of charitable donations. *It is pure coincidence* that the trip finally was scheduled and the donations were received three weeks after my telephone call to Mr. Wall.

"Coincidence in time and unsubstantiated inferences about proper inquiries such as my telephone call and receipt of charitable donations on a trip that had been in the making for many months cannot properly substitute for the lack of clear and convincing evidence of improper linkage, particularly where there is factual and convincing evidence that Mr. Keating *did not* ask me to set up a meeting in connection with a solicitation of a donation of any type."

ECR 3) a) (iv)

(iv) In early 1989, at the time that Senator Cranston was contacting Bank Board officials about the sale of Lincoln, either he or his chief fund raiser discussed another contribution from Keating or his associates. However, no further contribution was ever made.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 24–29 states:

"(iv) 1. *Donation:* The Resolution fails once again to point out that this was a solicitation of an I.R.S. approved 501(c)(3) charitable tax-deductible donation, the use of which I did not control. It was *not* a solicitation of political contributions for my benefit. The resolution accurately states that this donation was never made.

"The Resolution's description of [my "chief fund raiser"] Ms. Jacobson is misleading. In early 1987, she directed the fund-raising staff of the Democratic Senatorial Campaign Committee. At the time in question, early 1989 (and for more than a year before that) she was spending 50% of her time as a

consultant to the Democratic Senatorial Campaign Committee; 25% as a consultant to a P.A.C. I founded (Committee for a Democratic Consensus); and 25% as a consultant under contract to USAVotes to raise charitable donations for registration efforts.

"Mr. Rob Stein, the Executive Director of USAVotes, was in charge of its over-all operations. I was one of three co-chairman of USAVotes. I was not the direct supervisor of Ms. Jacobson in her capacity as a part-time employee of USAVotes, nor was I the direct supervisor of any other USAVotes employees.

"There is conflicting testimony concerning who solicited Lincoln at this time. I have testified that I do not recall discussing a donation with Messrs. Keating, Grogan or anybody during this period. (AC, 10/16/90, p. 68; 5/17/90, p. 299). I do not believe such a discussion ever took place. Mr. Grogan, when asked whether anybody on my staff or I solicited a donation from him of Mr. Keating during this period, testified that Ms. Jacobson, not I, discussed a donation with him. (JG, 12/14/90, pp. 179–80). Ms. Jacobson's recollection was that I solicited Mr. Keating during the period. (JJ, 12/3/90, pp. 167–8).

"I believe the following shows that Ms. Jacobson initiated the solicitation and that she did so without my knowledge.

"A memorandum from Joy Jacobson to me and to Rob Stein, the Executive Director of USAVotes, dated March 1, 1989, written on her home computer, shows that I did not make the solicitation and illustrates the mechanics of how the staff of USAVotes and I worked to solicit charitable donations. (Sp. Coun. Ex. 171). It was Ms. Jacobson's job to come up with the names of people, foundations and organizations which she thought would be potential donors. She would write a memorandum with the potential donors' names, suggestions as to who should contact them, and the amounts to be requested. When I reviewed it, I would look down the list for the names suggested for me. I would systematically try to call most, but not necessarily all, of the names suggested to me. When my part of the list was complete, I would hand it back with my notes about the calls to my secretary. She would report these results back to Ms. Jacobson.

"There are 18 names of potential donors on the March 1, 1989 memo. My handwritten notes or my secretary's notes appear under 12 of those names—only those that were proposed as my assignments.

"It is clear that Ms. Jacobson assigned herself three names on the first page: AFSCME, Dick Darling, and Charlie Keating. After Mr. Keating's name these words are typed in the memo: 'Joy is talking with Jim Grogan. 100,000 wherever it's needed.'

"This evidence corroborates Mr. Grogan's testimony that Ms. Jacobson, not I, made this solicitation. It indicates that her memory was incorrect when she testified that I solicited Mr. Keating. It shows that on the date of the memo, March 1, 1989, she had already discussed a $100,000 donation with Mr. Grogan.

"Ms. Jacobson's solicitation of Mr. Grogan is consistent with her explanation in her testimony 'that the first group you go back to [at the beginning of each year is] your past donors and try to renew them.' (JJ, 12/3/90, p. 161). Her solicitation of Mr. Grogan on her own is further evidenced by Ms. Jacobson's statement that 'the timing of the fundraising was something that was driven by my finance plan. If anyone was controlling the timing, I would say I was.' (JJ, 12/3/90, p. 176). She also stated that I never suggested to her to time any request for a donation to coincide with anything before the Bank Board or with any other event or events. (JJ, 12/3/90, pp. 175–6).

"2. *Official Action:* The record shows that, working on an entirely different track from Ms. Jacobson, I called Chairman Wall and Bank Board Members Roger Martin and Larry White between February and April 1989 for the sole and limited purpose of urging that careful consideration be given to three different proposed sales of Lincoln.

"Both Mr. Wall and Mr. Martin testified that in none of my calls did I urge final approval of any sale, and that there was nothing improper about the nature of my calls. (Sp. Coun. Ex. 428, Wall Affidavit, para. 10h, 12); (Sp. Coun. Ex. 17, Martin Affidavit, para. 11). The Resolution fails to describe the very limited and non-advocacy nature of my calls. It also fails to note that when Messrs. Keating or Grogan asked me to push hard for the approval of a specific sale of Lincoln, I refused to do so. (AC, 5/7/90, pp. 327–8); (Wall, 12/4/90, p. 91).

"3. *No Causal Connection:* It is again absurd to suggest that a donation of *any* sort would be necessary to motivate me to help my California constituents. There is no evidence that I contacted the Bank Board regarding the potential sale of Lincoln because of any donation. I made the calls because a proper sale would resolve a situation that otherwise could have led to a financial catastrophe in my state, California, that would have financially injured countless constituents of mine.

"For whatever reason, none of the sales materialized. However, the concerns that motivated my calls did occur. The consequences have been catastrophic: a cost to taxpayers presently estimated by the Resolution Trust Corporation to be $2.6 billion; tragic losses of the life savings of 23,000 Californians, mostly elderly and infirm, who bought approximately $200 million in now worthless debentures at Lincoln; and the loss of many jobs in California. The Committee correctly found that my contacts with regulators and those of the other four Senators were not the cause of the eventual failure of Lincoln or the thrift industry in general. (Committee Statement, 2/27/91, p. 1, para. 5).

"The Resolution ignores my true motivation for making the telephone calls between February and April, 1989, instead favoring the *inference* that the calls were motivated by a possible charitable donation that was never made. This inference ignores my legitimate motivation: to prevent financial damage to many of my constituents.

"In response to the inference I point to the clear and convincing evidence that (a) I did not solicit a charitable donation, and that (b) I did not know that Ms. Jacobson had made a solicitation until I read her memo of *March 1, 1989*. Once I knew, the knowledge had no effect on my conduct.

"Ms. Jacobson testified that she was not aware that Messrs. Keating or Grogan was talking to me about the sale, nor that I was being asked to do anything about it. (JJ, 7/19/90, p. 179).

"*There is absolutely no evidence* of any causal connection between (a) Ms. Jacobson's solicitation, and (b) my telephone calls in 1989 to regulators regarding possible sales of Lincoln. Here, again, unsubstantiated inferences based solely on mere coincidence of time *cannot be a substitute* for evidence of a causal connection between a solicitation and an official action.

"The *fair inference* from the record is that Ms. Jacobson was on one track following up according to her standard practice with one of the few established contributors whom she solicited personally and regularly at the beginning of each year. Meanwhile, I was on another track taking very limited official actions contacting regulators regarding the possible sale of Lincoln—actions for which there was clear and independent constituent related justification. Senator DeConcini made the same type of inquiries for similar reasons.

"The foregoing analysis of each of the four 'occasions' cited in the Resolution demonstrates that there is absolutely no evidence of a causal relationship between any of Mr. Keating's donations and any of my actions, and that there is overwhelming evidence to the contrary.

"I remind the Committee again of Mr. Grogan's response when my attorney asked him the following question: 'Was there any suggestion, either by word or by body language, or by raised eyebrow, that Senator Cranston's interest in Lincoln Savings' problems was tied to Mr. Keating's support of the non-profit voter registration efforts?' Mr. Grogan replied, 'Never.' (JG, 12/15/90, p. 132).

"The Special Counsel has cited no evidence that Mr. Keating authorized donations only on condition that I would help him, or because I had helped him. He cited no evidence that I agreed to help only if Mr. Keating contributed.[15]"

ECR 3) b) (i)

(b) Senator Cranston's Senate office practices further evidenced an impermissible pattern of conduct in which fund raising and official activities were substantially linked, in that, with his knowledge, permission, at his direction, or under his supervision, Senator Cranston's fund raiser (who was not a Senate employee):

(i) Senate Cranston's fund-raiser assisted in scheduling and attended meetings in the Senator's Senate office between the Senator and contributors about legislative or regulatory issues.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 31–32 states:

"Mr. Grogan met Ms. Jacobson in 1984. (JG, 12/12/90, pp. 71–73); (JJ, 12/3/90, p. 91; 7/19/90, p. 37). He testified that he would call her to schedule appointments until he became acquainted with members of my Senate staff and began to turn to them to arrange appointments. (JG, 12/12/90, p. 93).

"Ms. Jacobson testified that after March, 1987, the only meetings which she was involved in arranging were for fund-raising or social purposes, not substantive purposes. (JJ, 12/3/90, p. 96). She testified that she didn't know about the April 2 and April 9 meetings until long after they occurred. (JJ, 12/3/90, p. 130). She testified that she arranged *no* substantive meetings during the entire two year period from April, 1987, to April, 1989, during which the other three 'occasions' occurred that raise questions of causal connections. [Referred to in Paragraph (a) 1 of the Resolution].

"The Resolution inaccurately states that Ms. Jacobson scheduled meetings for me. The evidence shows that she had to go through my Secretary or my Administrative Assistant to place appointments on my schedule.[16] (JJ, 7/17/90, p. 76).

"Ms. Jacobson's testimony differs from mine about why she attended such meetings. I have testified that Ms. Jacobson suggested to me that it would be helpful for her to be present so she would know what was going on. (AC, 4/30/90, p. 24). She testified that she was there to make sure that the charitable

donor felt at home in my hectic and crowded office before I arrived or if I were called away on Senate business. (JJ, 12/3/90, pp. 86–90).

"Ms. Jacobson has testified, and I confirm, that she never participated in substantive discussions in any meetings. (JJ, 12/3/90, p. 86). Moreover, Ms. Jacobson testified that she often paid no attention to the substantive discussions: 'While a substantive discussion was going on, I often would get up and go make phone calls outside of the office. There's a round table that I often worked at in Senator Cranston's Whip office. While a substantive meeting was going on in another section of the same room, I would be off doing something else.' (JJ, 12/3/90, p. 90).

"To the best of my knowledge, Ms. Jacobson never attempted to influence an official action in any way. Neither anyone on my staff nor I made a decision of substance based on any actions by Ms. Jacobson.

ECR (3) (b) (ii)

(ii) Senator Cranston's fund-raiser served as an intermediary for Mr. Keating or Mr. Grogan when they could not reach the Senator or his banking aide.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), p. 33 states:

"The Resolution's use of the word 'intermediary' is misleading and unfair. The record shows, as I have just indicated, that Ms. Jacobson did not engage in any substantive negotiations or take any substantive actions. She testified that she simply passed messages along occasionally when Mr. Grogan was unable to reach me or members of my Senate staff. (JJ, 12/3/90, p. 156). Ms. Jacobson testified, 'It was Jim Grogan's nature to just keep dialing until he got somebody. Again, it usually had to do with something that was going to happen and he needed to get a hold of somebody, whether it was Roy [Greenaway] or Alan [Cranston] or Carolyn [Jordan], and I would say, I'll pass it along.' (JJ, 7/19/90, p. 168).[17] Ms. Jacobson also testified, '. . . At the beginning they always did call me. My understanding is that later on they often didn't call me, that they called Roy Greenaway [my Administrative Assistant] or they called Mary Lou [McNeely, my Secretary] directly or they just showed up at the office.'" (JJ, 7/19/90, p. 164).

ECR (3) (b) (iii)

(iii) evidenced, through written memoranda addressed to Senator Cranston, an incorrect understanding that contributors may be entitled to special attention and special *access* to official services. The incorrect understanding was never corrected by the Senator.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 34–37 states:

"The Special Counsel focused on one memo dated January 7, 1987. (Sp. Coun. Ex. 154). It was written prior to *all* the specific donations referred to in the Committee's Resolution.

"Ms. Jacobson did *not* state—as the Resolution indicates—that the individuals she mentioned in her January 7 memo were 'entitled to special attention and special access to official services.' She said the individuals expected 'some kind of resolution' of pending matters. That is exactly what every constituent, whether a contributor or not, rightfully expects from their Senator. That is exactly what every constituent of mine gets, whether he is a contributor or not, to the best of my ability and my staff's ability. Note that Ms. Jacobson did not state that these individuals could rightfully expect a *favorable* resolution. She said they would expect *'some kind' of resolution.*

"She explained the meaning and intent of this memo in her testimony. She testified that the individuals she mentioned, like all constituents, were entitled to a response from me as to what, if anything, I was going to do about their problems—not necessarily a positive response or resolution—but *some* response or resolution (JJ, 7/19/90, p. 99–101; 12/3/90, pp. 204–5). They may not like the response, but they like all constituents are at least entitled to be heard and to be given a decision. That is all Ms. Jacobson advocated and that is all I ever tried to provide.

"Furthermore, Ms. Jacobson testified that several individuals mentioned in her January 7 memo, including Mr. Keating, did not get the results they wanted. (JJ, 12/3/90, pp. 205–6). I understand how someone with 20/20 hindsight might question the implication of Ms. Jacobson's words, but my deeds followed the *words*, not the *implications*.

"Improper inferences drawn from a memo written by someone else, not by me, *must not be accepted as a substitute* for clear and convincing evidence of causal connections between my official actions and donations.

"The only other memos I am aware of from Ms. Jacobson simply passed on information or contained updates on charitable donations.

"Moreover, and in fundamental fairness to Ms. Jacobson, I believe that the Resolution *unfairly implies* that she lacked understanding of proper policy regarding donations and official actions. Ms. Jacobson testified that she knew there could not and must not be a quid pro quo between official actions and donations, and that my absolute firm office practice was to have nothing to do with any potential donor who sought to link donation to official action. (JJ, 12/3/90, pp. 223–4, 239–40).

"Specifically, in relation to Lincoln, Ms. Jacobson testified that neither Messrs. Keating, Grogan nor I ever indicated that *any* donations were made with any understanding that I would do *anything* in return (JJ, 12/3/90, pp. 175–6):

Q. Did Mr. Grogan ever tell you that the contributions were made with the understanding that Senator Cranston would do anything in return?

A. Absolutely not.

Q. Did anyone whom you knew to be associated with Lincoln Savings or American Continental ever tell you that any of the contributions were made with the understanding that Senator Cranston would do something in return?

A. No.

Q. Did Senator Cranston eve say to you that he thought that the contributions which you have discussed were made with an expectation that he would act in any way on behalf of Mr. Keating, or Lincoln or American Continental?

A. No.

Q. To your knowledge, did Senator Cranston do anything for or on behalf of Lincoln Savings because Mr. Keating assisted his reelection campaign?

A. No.

Q. Did he to your knowledge do anything for or on behalf of Lincoln Savings because Mr. Keating contributed money to USA Votes, Forum Institute or the Center For Participation in Democracy?

A. No.

Q. Did Mr. Keating or anyone associated with him ever tell you that a contribution would be made after Senator Cranston made an inquiry on his behalf?

A. No.

Q. Did Senator Cranston ever tell you or suggest to you that you should time any request for contributions to coincide with anything occurring before the Bank Board?

A. No. In fact, the timing of the fund-raising was something that was driven by my finance plan. If anyone was controlling the timing, I would say I was.

Q. Did Senator Cranston ever tell you to time a solicitation to Mr. Keating to coincide with any other event or events to your recollection?

A. No.[16]

"The Resolution inappropriately states that Ms. Jacobson understood that donors were entitled to special access. Mr. Grogan testified that he was able to obtain my attention—in other words get access to me—before any of the charitable donations for voter registration were made by Mr. Keating. (CG, 12/15/90, p. 134).

ECR p. 5: Be it further resolved that the Committee finds:

(1) That in connection with his conduct relating to Charles H. Keating, Jr., and Lincoln Savings and Loan Association, Senator Alan Cranston of California engaged in an impermissible pattern of conduct in which fund raising and official duties were substantial linked in that:

(a) From early 1987 through April 1989, Senator Cranston personally or through Senate staff contacted the Federal Home Loan Bank Board on behalf of Lincoln, during a period when Senator Cranston, on behalf of organizations in whose success he had a deep concern, was soliciting and accepting substantial contributions from Mr. Keating; and

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 51–55 states:

"The Resolution easily could give the erroneous impression to anyone not familiar with the facts that the donations referred to were all of a political nature to some campaign or P.A.C. of mine. It omits any reference to the established and undisputed fact that 85.3% of the money—totalling $725,000—that Mr. Keating donated from early 1987 through April, 1989 was in the form of I.R.S. approved 501(c)(3) tax-deductible charitable donations to organizations that were not under my control and whose use of the money was not under my control.

"In addition, Mr. Keating donated $125,000 to America Votes, an organization that raised tax-deductibe charitable donations for I.R.S. approved 501(c)(3) independent, nonpartisan, grass roots, voter registration organizations in approximately 20 states during 1987 and 1988.

"The Resolution fails to point out that *none* of Mr. Keating's donations which are being questioned during this period was in the form of a political contribution to any campaign of mine. Only $10,000 was to a federal P.A.C. that I organized.

"The Resolution ignores the important fact that *all* these donations were made *after* my 1986 reelection. An expert on voting, Curtis B. Gans, who is Director of the non-partisan, non-profit, Committee for the Study of the American Electorate, testified that registration efforts in California in 1987 and 1988 that were supported by some of the funds I raised would have had "negligible impact" on my reelection campaign four years later (had I chosen to run in 1992). "I could think of no less cost-effective way of advancing one's own interest," he testified. (Affidavit of Curtis B. Gans, Cranston Exhibit 77).

"Section (a)(1) of the Resolution fails to make clear that *all* the contacts I had with regulators during this time—and at all other times—were, standing alone, not only proper, as the Committee's Statement of February 27, 1991 acknowledges, but were also de minimis. The established fact is that they were all routine status inquiries, or requests that somebody see somebody, or requests that various proposed sales of Lincoln be carefully considered. The Committe fails to make clear that in *none* of the contacts I made did I ever advocate any particular action. It fails to make clear that I *never* urged the regulators to take or refrain from any particular action.

"Thus the alleged improprieties that the Resolution suggests occurred arise solely because of routine, non-substantive inquiries I made on behalf of constitutents that may have been in some way proximate in time to the solicitation or receipt of charitable or related donations.

"I previously have noted in statements to the Committee that my actions in respect to Mr. Keating *should not be viewed as if they occurred in a vacuum.* I pointed out that my days and my nights are characterized by constant, passionate work on the great issues of our time, like war and peace, the environment and the economy, justice, and equal rights. I cited my many responsibilities during the time these events occurred, including my leadership role in the Senate as Majority Whip: my Chairmanship of the Veterans' Affairs Committee; my membership on several other committees and the Chairmanship of busy and important subcommittees; my very active role in fund-raising for the other Senators and causes as well as for my campaigns; and the fact that—along with my Senate colleague from California—I represent many more constituents (30 million) than do any other Senators. Indeed, California's Senators *represent more constituents* than any other legislator *has ever represented* in any country in the *entire history of legislative bodies.*

"Constantly, I am called upon for help by my constituents. Unlike a corporation, I do not have the funds and the capacity to verify the financial status or the moral stature of each constituent who presents a problem to me. I cannot ask Dun and Bradstreet or the FBI to provide me with this information. More than 300,000 constituent requests have been handled by my staff and me in the 22 years I have been in the Senate. I deeply regret that one involving Lincoln Savings has created the problem that is before us.

"A casual observer of the hearings might well have obtained the false impression that I did little else over several years except deal with regulators regarding Lincoln. This is not the case. *In the almost two years period* between the April 1987 meetings and February 8, 1989, I had only five contacts with Federal regulators regarding Lincoln. I had no contacts at all between May 16, 1988, when Mr. Wall requested an appointment with me to discuss legislation, and February, 1989, when the sale of Lincoln came up.

"In the period from February 8 through April 14, 1989, I had only five contacts with FHLBB members Wall, Martin and White regarding *three different proposals* to sell Lincoln. All contacts that I initiated were proper status inquiries. I had a legitimate basis for making them. All these contacts related to the interests of many thousands of my constituents whose jobs and financial well-being depended upon the fate of Lincoln.

"I by no means responded favorably to every request by Messrs. Keating or Grogan for me to take some official action. I already have cited my refusal to push hard for the approval of a specific sale of Lincoln. Mr. Grogan in his testimony cited several examples of requests for actions that I declined to take. (JG, 12/12/90, p. 113; 12/13/90, pp. 130, 206–7, 215, 306; 12/15/90, pp. 90, 93–4, 96–8).

"Besides citing many facts that contradict the causal connection theory concerning charitable donations and my official actions, I have presented a list of inaccuracies and important facts that were omitted in the Committee documents of February 27. In all fairness, these matters should be corrected in the final documents that are issued by the Committee.

"A fair question to ask is: To what extent was the Committee influenced by these omissions of important facts, inaccuracies, and unwarranted implications in material put before it while reaching its conclusions announced on February 27, 1991?

"I protest allegations of linkage, explicit or implicit, based merely on unsubstantiated and prejudicial inferences instead of demonstrable evidence.

"I am convinced that a full and further review of the record, in light of my Submission, can only lead to three conclusions:

"First, there is no evidence of a causal connection between any solicitation or donation and any official action on my part.

"Second, that my conduct was not materially different from that of the other four Senators involved.

"Third, that whatever differences there were between the actions of the four Senators and mine they were not differences of *kind.* A fair and impartial consideration of this matter can only lead one to the conclusion that the Committee's treatment of my actions *should not differ in kind* from the treatment it accorded Senators DeConcini, Glenn, McCain and Riegle. I concede that I should have recognized that fund-raising-even for charitable donations—close in time to official actions could lead to an appearance of impropriety. It was a mistake not to have given more thought to appearances."

ECR p. 5: Be it further resolved that the Committee finds:

ECR 1) (b)

b) Senator Cranston's Senate office practices further evidenced an impermissible pattern of conduct in which fundraising and official activities were substantially linked.

This statement is a distortion of the facts. *Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp 30, 55 states:*

"The Resolution raises questions . . . about my Senate office practices, citing three examples of activities engaged in by Ms. Jacobson, a part-time employee of USAVotes, over whom I had no real supervisory role. I have already indicated that she was *not* a member of my Senate staff. She had no substantive expertise in Banking Committee issues and did not substantively involve herself in my official Senate activities. The words "Senate office practices" is inaccurate and misleading. Ms. Jacobson came to my office occasionally, but by no means frequently or regularly. She worked out of her home in Virginia. Unlike the practice in some Senate offices, I have never assigned major political fund-raising responsibilities to anyone serving part time or full time on my Senate staff. I have designated two Senate staff members under Rule 41, but they have done comparatively little political fund-raising. All fund-raising efforts with which I have been involved, whether political or charitable, have been the responsibility of individuals employed elsewhere—*not* in my Senate office.

"Although some of Ms. Jacobson's activities are susceptible to an interpretation that they raise an appearance of impropriety, they do not constitute clear and convincing evidence of a casual connection between (a) my personal official actions and (b) solicitations of donations I made or of which I was aware.

"I concede that I should have constrained more closely the individual who was working for an organization that raised charitable contributions.

"I readily concede these errors, but these were errors in judgment, not in intent.

"I deeply regret them.

"Without any clear and convincing evidence that any official action of my was causally linked to any donation, however, there is no reason for the Committee to recommend institutional action in my case."

It is further resolved:

1) That Senator Cranston's impermissible pattern of conduct violated established norms of behavior in the Senate, and was improper conduct that reflects upon the Senate, as contemplated in Section 2(a)(1) of S. Res. 338, 88th Congress, as amended.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 4–5, 43–47 states:

"Since timing and appearances did not warrant institutional action in the cases of the other Senators, it should not in my case.

"The Senate has never set standards *of any kind* governing the timing of contributions of any kind in relationship to legitimate constituent services. I fully recognize that if a Senator engages in conduct that is inimical to generally accepted and understood standards and values, the Senate has an obligation to find that Senator guilty of improper behavior, although his conduct does not violate a specific law or Senate Rule. There is no evidence that I engaged in any improper conduct.

"Without clear and convincing evidence of actual impropriety, there is no justification for subjecting me to disciplinary action. There is *no precedent* for the Senate diciplining a Senator for actions such as mine. The Senate has *never* determined that it is an ethics violation for a Senator to engage in legitimate constituent service on behalf of a contributor because it was—or might appear to be—close in time to a lawful donation to the Senator's campaign or to a charity the Senator supports. To do so now would be contrary to the principles of the Senate and a violation of traditional concepts of fair play by proceeding in an *ex post facto* fashion.

"In every case of financial impropriety considered by the Senate throughout its history, the alleged misconduct was the use of public office for a Senator's *private* profit. Neither any member of my family nor I received any compensation or personally benefitted in any way from these charitable contributions. I had no financial interest in Lincoln Savings, its parent, or affiliates. I received no income from it.

"I will discuss the Special Counsel's proposal to extend to Senators the appearance standard in the Code of Ethics for Government Service that applies to federal judges and civil servants. The Senate has never adopted that code as an ethical standard applicable to Senators. There is no reference to it in any of the over 400 published Interpretative Rulings issued by the Select Committee on Ethics. The Special Counsel overlooks fundamental differences between federal

judges and civil servants. Federal judges and civil servants do not have to raise funds to stay in office. A judge is not expected to serve the interests of the parties before him. A Senator is expected to *represent* his consitituents, and to be—and to appear to be—responsive to their legitimate needs. Senators should not be at risk of discipline for violation of an appearance standard that would prevent us from intervening of behalf of constituents, contributors and non-contributors alike, when intervention is appropriate.

"The Committee did not conclude that these three coincidences of receipt by Senators RIEGLE, DECONCINI and GLENN of these political contributions in proximity of time to their official actions. How, then, could the Committee without *any* substantiating evidence conclude that there was any causal connection between my receipt—on behalf of others—of charitable and related donations and my official actions? My case, like the cases of Senators RIEGLE, DECONCINI and GLENN, *can only involve* questions of judgment and appearances.

"I believe, too, that our actions did not differ in kind from legitimate actions of our 95 colleagues. Virtually every Senator raises funds for his campaigns and renders legitimate services to his constituents, including contributors, when they need it. I have noted previously that many Senators are active in one way or another with charitable organizations and some Senators raise very substantial money for them.

"*There are no U.S. Senate rules, Precedents, or cases in which a Senator has been disciplined for assistance to a constituent when the Senator received no personal financial profit.*

"If the Committee believes there should be limits on a Senator's ability to perform his official duties for a contributor based upon the timing or proximity of a donation to an official act, it may recommend that change to the full Senate and allow all 100 members of this body to debate such a proposed rule.

"It would be contrary to the principles of the Senate and a violation of traditional concepts of fair play to apply such a rule to me now *in what would clearly be an ex post facto fashion*.

"There is *no precedent* for the Senate disciplining a Senator for actions such as mine. The Senate *never* has determined that it is an ethics violation for a Senator to engage in legitimate constituent service on behalf of a contributor because it was—or might appear to be—close in time to a lawful contribution to the Senator's campaign or to a lawful donation to a charity that the Senator supports.

"The Senate has to date rejected attempts to create Ethics Rules that would restrict the ability of its members to give their supporters the impression that they will be responsive to their needs. There is a *fundamental difference* between a Senator acting on behalf of a constituent and a Senator acting for his personal gain. It is one thing to say that a Senator should not do anything in his official capacity that appears to bring him personal gain. It is quite another to say he should not do anything in his official capacity that appears to benefit supporters or contributors. The former is a conflict of interest and a violation of public trust. The latter is not only *not* a violation of trust, but a fulfillment of it. Its appearance can seem improper only to those who distrust the system itself.

"In *every* case of financial impropriety considered by the Senate throughout its history, the alleged misconduct was the use of public office for a Senator's *private* profit. The last four Senators who were disciplined by the Senate were involved in actions that resulted in *personal* gain. There has *never* been a case that has led to the disciplining of a Senator for assisting, or appearing to assist, a constituent-contributor when the Senator received no personal profit.[19]

"The history of conflict of interest rules for the Senate and the House demonstrates that the evil at which all those efforts have been directed is the use of elective office for personal gain.

"Senate Rule 37, the conflict of interest rule, distinguishes between personal and political benefit. It prohibits Senators and staffers from intervening with federal agencies for the purpose of furthering their financial interest or receiving compensation from a constituent. Its application is limited to agency intervention 'resulting in measurable *personal* financial gain.'

"The Senate in 1977 rejected a proposed rule suggesting that the motive of a contributor could make a contribution improper. Senator Nelson, Chairman of a Special Committee, had proposed that Rule 35, pertaining to gifts, also should ban acceptance of anything "intended to affect the present or future performance of official duties." Senator Stevens attacked the proposal as 'something no one can live up to if he is honest with himself and the American people . . . It is a standard of conduct with which one cannot comply in good faith and good conscience as a member of the U.S. Senate.' Senator Nelson finally agreed, saying, 'I do not think it makes sense at all, and someone who was working overtime and got tired must have written it.' (pp. 144–5, Davidson Legal Counsel Report, March 1991).

"The Committee acknowledges in its Statement of February 27, 1991 that the Senate presently has no specific written standards embodied in Senate rules respecting contact with Federal or independent regulatory agency officials. The Committee suggests a process for establishing such standards and states that until that is accomplished, 'All Senators are encouraged to use House Advisory Opinion No. 1 as a source of guidance for their actions.'

"House Advisory Opinion No. 1 indicates that it is proper for a member to communicate with an executive or independent agency on any matter to request information or status reports; to urge prompt consideration; arrange for interviews or appointments; express judgments; call for reconsideration of an administrative response that the member believes is not supported by established law, Federal regulation or legislative intent; or perform any other service of a similar nature in this area that is compatible with the criteria expressed in the Advisory Opinion.

"The Advisory Opinion makes *absolutely no reference* to campaign contributions or chartable donations, or to the timing of campaign contributions or charitable donations solicited or received by a member who performs any of these approved and specified actions. It notes that it is a felony to seek or receive "compensation for any services rendered.

"All my actions with respect to Lincoln were well within the guidelines of House Advisory Opinion No. 1."

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[1] Many of these same inconsistencies are also in the Report of Special Counsel, Robert Bennett, that Senator Helms released to the press on August 2, 1991 in violation of the Ethics Committee rules.

[2] William Seidman subsequently said, referring to the Arthur Young and Alan Greenspan letters, "Those two documents, I think, were pretty extraordinary for Senators to receive in terms of convincing them of the possibility that the bureaucracy was out of control. The Senators had a couple pieces of paper that could have raised questions in their mind. You have to say this on behalf of the Senators: they got a letter from a Big 8 accounting firm, the likes of which I think had never been done before in history in which the firm on the stationery said the regulators are harassing the company, treating them unfairly, et cetera." (AC, 4/30/90, p. 105).

[3] Such status inquiry calls are certainly routine for most if not all Senators. (Senate Ethics Committee, 2/27/91, p. 3, para. 1).

[4] Back in the 70's, another large corporation, Lockheed, was facing bankruptcy. Lockheed had invested millions of dollars in my state. The livelihoods of many thousands of my constituents and their families were at risk—as was the case with Lincoln Savings. I devoted far more time and effort and made many more phone calls about Lockheed's plight than I ever did about Lincoln's as I successfully endeavored to obtain a government guaranteed loan for Lockheed.

Lockheed was not a contributor to my campaigns or causes. In fact, Lockheed had contributed to my opponent in the previous election.

[5] Again, such phone calls are certainly routine for all or most Senators. The Supreme Court has noted, "The making of appointments with government agencies is a 'legitimate errand' performed by Members of Congress for constituents." (*Brewster* 409 U.S. at 512). The Supreme Court has also judicially observed that Senators may be more aggressive than any of the five of use were in dealing with the Bank Board: "Senators are constantly in touch with the Executive Branch of the Government and with administrative agencies—they may cajole and exhort with respect to the administration of a statute." (Gravel v. U.S., 408 U.S. 606, 626, 1972).

[6] Again, such phone calls are certainly routine for all or most Senators. The Supreme Court has noted, "The making of appointments with government agencies is a 'legitimate errand' performed by Members of Congress for constituents." (*Brewster* 408 US. at 512). The Supreme Court has also judicially observed that Senators may be more aggressive than any of the five of us were in dealing with the Bank Board: "Senators are constantly in touch with the Executive Branch of the Government and with administrative agencies they may *cajole* and *exhort* with respect to the administration of a statute." (Gravel v. U.S., 408 U.S. 606, 626, 1972),

[7] It would not have been unusual for Mr. Keating to make an unsolicited donation. The record shows that in 1985, he made an unsolicited $200,000 political contribution to Senator Glenn's Political Action Committee.

[8] In December, 1990, the San Francisco Chronicle falsely accused me of trading favors for cash. When I threatened to sue the Chronicle for libel, the Chronicle published a complete Page One restraction.

[9] That is why I have voluntarily made my tax returns public for many years. That is why I established a blind trust during my first term in the Senate. That is why I stopped accepting honoraria.

[10] William Seidman subsequently said, referring to the Arthur Young and Alan Greenspan letters, "Those two documents, I think, were pretty extraordinary for Senators to receive in terms of convincing them of the possibility that the bureaucracy was out of control. The Senators had a couple pieces of paper that could have raised questions in their mind. You have to say this on behalf of the Senators: they got a letter from a Big 8 accounting firm, the likes of which I think had never been done before in history in which the firm on the stationery said the regulators are harassing the company, treating them unfairly, et cetera." (AC, 4/30/90, p. 105).

[11] Such status inquiry calls are certainly routine for most if not all Senators. (Senate Ethics Committee, 2/27/91, p. 3, para. 1).

[12] Back in the 70's another large corporation, Lockheed, was facing bankruptcy. Lockheed had invested millions of dollars in my state. The livelihoods of many thousands of my constituents and their families were at risk—as was the case with Lincoln Savings. I devoted far more time and effort and made many more phone calls about Lickheed's plight than I ever did about Lincoln's as I successfully endeavored to obtain a government guaranteed loan for Lockheed.

Lockheed was not a contributor to my campaigns or causes. In fact, Lockheed had contributed to my opponent in the previous election.

[13] Again, such phone calls are certainly routine for all or most Senators. The Supreme Court has noted, "The marking of appointments with government agencies is a 'legitimate errand' performed by Members of Congress for constituents." (*Brewster* 408 U.S. at 512). The Supreme Court has also judicially observed that Senators may be more aggresive than any of the five of us were in dealing with the Bank Board: "Senators are constantly in touch with the Executive Branch of the Government and with administrative agencies—they may *cajole* and *exhort* with respect to the administration of a statute." (Gravel v. U.S., 408 U.S. 606, 626, 1972),

[14] It would not have been unusual for Mr. Keating to make an unsolicited donation. The record shows that in 1985, he made an unsolicited $200,000 political contribution to Senator Glenn's Political Action Committee.

[15] December, 1990, the San Francisco Chronicle falsely accused me of trading favors for cash. When I threatened to sue the Chronicle for libel, the Chronicle published a complete Page One retraction.

[16] Ms. Jacobson's activities should be considered in the context of Senate Rule 41 that permits Senators to appoint up to three members of their staffs who may solicit and receive campaign and political contributions. Ninety-nine Senators had done so as of November, 1990. All 99 Senators appointed key staffers, including 90 Administrative Assistants, who could raise and receive contributions while simultaneously possessing the enormous power to schedule appointments; to draft, amend, advance or delay legislation; and to deal with the Executive Branch and regulatory agencies.

Thus, the Senate has ruled that there is no impropriety and no appearance of impropriety if a Senate staffer who raises funds also schedules and attends meetings where substantive matters are discussed with a constituent-contributor. It seems to me that if there is a question of appearances if a fund-raiser who is not on the Senate staff attends such meetings, therre is at least an equal possibility of an appearance question when the roles are commingled.

[17] I must note a separate but relevant matter that was established during the hearings involving Bill White, who had formerly been Senator Glenn's Administrative Assistant. Mr. White subsequently left Senator Glenn's staff and proceeded to serve as Chairman and Treasurer of the John Glenn Committee, Inc. Mr. White received a letter dated June 6, 1984 from Mr. Grogan. The letter began as follows: "Dear Bill: Many thanks for arranging to meet with Bob Kielty regarding the JHG fundraiser in Phoenix. Also many thanks for coordinating with Dan Dougherty, etcetera, regarding the proposed FHLB regulation limiting direct investments by insured institutions." (Sp. Coun. Ex. 33); (Glenn, 1/4/91, pp. 225-6).

In this instance the Committee did not feel it necessary to be critical of Senator Glenn for the fact that his fund-raiser, who was not on his Senate staff, was coordinating in substantive areas.

[18] The testimony of my Banking Committee aide, Ms. Jordan, substantiates Ms. Jacobson's. The Special Counsel asked her if it was the general philosophy of my office that donors could rightfully expect some kind of resolution of the issues that they brought to her. She replied that it was the policy of our office to respond to all inquiries. There was no mechanism for keeping staffers informed of who were contributors, nor any effort to do so in any way. Ms. Jordan certainly made no inquiries about whether somebody was a contributor before she decided how to act on a particular request. Ms. Jordan testified, "It was basically our posture that we resolved everything as far as one way or another, either for or against."

The Special Counsel asked Ms. Jordan how she set priorities, how she decided which complaints got handled first and in depth. She responded, "I've never had that problem. I can't remember having a problem like that where I had to stop doing something for one person to do something for another." (CJ, 6/27/90, pp. 57-8).

[19] In one case in 1873 when the Senate investigated whether Senators Harlan and Patterson had been bribed by an offer of Credit Mobilier stock at preferential rates, the Senate also considered whether Senator Harlan's conduct violated ethical standards because of a related campaign contribution. A special Senate Committee apparently found that the contribution was made to influence Senator Harlan, but the Committee recommended no disciplinary action because the contribution did "not appear to have influenced his action as a Senator." (pp. 59-60, Senate Legal Counsel Memorandum to Select Committee on Ethics, March 1991). [S20NO1-P2](S17202)rch 1991).

Mr. HEFLIN. Mr. President, we have, I believe, 11 minutes remaining. I understand Senator RUDMAN wishes some time. I yield to him at this time up to 6 minutes, perhaps more if he needs it.

The PRESIDENT pro tempore. The Senator from New Hampshire [Mr. RUDMAN] is recognized.

Mr. RUDMAN. Mr. President, I had not intended to use any of this time, but in behalf of this committee and of this institution, I am going to be very brief. My full response, point by point, will be in writing and on the desks of every U.S. Senator and the press next week.

Mr. President, I must say regretfully that, after accepting this committee's recommendation, what I have heard as a statement I can only describe as arrogant, unrepentent, and a smear on this institution. Everybody does not do it. The linkage that this committee rested its case upon is not based only on time. The report talks about linkage of money, time, and other circumstances, not present in any of the other four cases before us.

Second, it is true that many Members of this institution care deeply about charities for the public good. And they, in fact, do raise money for those charities, and many have come to the committee for advice on how they should proceed. Everybody does not do it.

Finally, Mr. President, I have served only 11 years, far less than the occupant of the chair and many others. But I think I know this: That Members of this body attempt, by word and deed, publicly and privately, to take great care with their personal conduct as it might be perceived by the American people. That is equally true for Democrats and Republicans, liberals and conservatives. I have found that to be the one unifying thread in this body.

For the Senator from California to rise and give a speech on this floor, after accepting this admonition, this serious reprimand, a reprimand because of circumstances he knows full well, rather than a vote, which I would have preferred, and to blame it on campaign finance, and everybody does it, and you should all be in fear of your lives from the Ethics Committee is poppycock. I repeat, regretfully, that statement is arrogant; it is unrepentant; it is unworthy of the record of the senior Senator from California.

Mr. HEFLIN. Mr. President, I reserve the remainder of the time that we have at this time.

Mr. CRANSTON addressed the Chair.

The PRESIDENT pro tempore. The distinguished Senator from California.

Mr. CRANSTON. Mr. President, I stand by my remarks. I stated them in order to demonstrate—as I could well demonstrate—that I have not violated the norms of this body. I also said it in the hope that reforms can be brought about that will enhance this body, respect for this body in the country and provide better Government and more equal opportunity for all the people of our country.

I refer you to the documents that I have inserted in the RECORD at the end of my remarks that deal with many of the details in the presentation that was made by the committee in its written documents and in the statements made on the floor today.

After I have an opportunity to see the written response by Senator RUDMAN, I will have my own response to that response. I hope this does not go on endlessly. It should not. But I want the RECORD to be as clear as it can be for the benefit of the Members of this body, for my own benefit, most of all for the benefit of the Senate, and more importantly yet, for the people of this country.

The PRESIDENT pro tempore. Does the Senator from Alabama wish to utilize additional time?

Mr. HEFLIN. Mr. President, how much time do I have remaining?

The PRESIDENT pro tempore. Seven minutes 28 seconds.

Mr. HEFLIN. Does Senator RUDMAN desire any further time?

Mr. RUDMAN. I thank the chairman, but I have no other need for time.

Mr. HEFLIN. Mr. President, as stated in the beginning, this has been a long and arduous process, and there are many difficulties that arise in subjective evaluations of ethical standards. I think everybody in America is a strong believer in the rule of law and opposed to the rule of man. However, when it comes to subjective evaluations in ethics, it is basically following the rule of man.

Men differ when it comes to evaluation of those types of activities. An example of this subjective evaluation is how a Saudi Arabian sheik might relate to women as opposed to a person in America. They are basically ethical standards or mores that exist, and there are differences that you might have.

I think it is up to the Senate, for each of us, to consider the norms. The committee studied it. We felt as if there was an established norm and that the established norm was violated in this case.

It has been a long and arduous process, and I think it is time that we conclude this. But before I do, I would like to thank some individuals who have been involved: Special Counsel Robert S. Bennett, Amy Sabrin, Abigail Raphael, Bonnie Austin, Vaughn Dunnigan, and Benjamin Klubes.

Then on the Ethics Committee staff: Wilson Abney, Ruth Anderson, David Apol, Victor Baird, Karen Bovard, Anne Chamberlain, Houston Fuller, Annette Gillis, Felicia Lopez, Julie Min, Marie Mullis, and Jeannine Renninger.

Our personal staffs: Dalton Smith, of my staff; Thomas Polgar, of Senator

RUDMAN's; Elizabeth Ryan, of Senator RUDMAN's; John Monahan, of Senator PRYOR's; Barbara Larkin, of Senator SANFORD's; Darryl Nirenberg, of Senator HELMS'; and Stan Harris, of Senator LOTT's.

I also want to thank the Senate legal counsel: Mike Davidson, Morgan Frankel, Claire Sylvia, and Sara Fox Jones.

I would like to also give a particular word of thanks to Senator HARRY REID, who served as counsel to Senator CRANSTON, and in regard to many matters he was very helpful, spent a lot of time and long hours and at various times, and we appreciate his effort.

I yield back our time.

The PRESIDENT pro tempore. The Chair will inquire of the Senator from Alabama as to whether or not this does conclude the investigation of Senator CRANSTON?

Mr. HEFLIN. Yes; it does.

Mr. MITCHELL addressed the Chair.

VETERANS POST-TRAUMATIC STRESS DISORDER TREATMENT ACT

The PRESIDENT pro tempore. Under the order, upon the conclusion of the presentation, the Senate will resume its consideration of the pending business, which is S. 869, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 869) to amend title 38, United States Code, to improve the availability of treatment of veterans for post-traumatic stress disorder and for other purposes.

The Senate continued with the consideration of the bill.

The PRESIDENT pro tempore. The majority leader.

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

The PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DECONCINI addressed the Chair.

The PRESIDENT pro tempore. The Senate will be in order.

Staff persons will take seats which are provided in the rear of the Chamber.

Mr. DECONCINI. Mr. President, for clarification, as we are now returning to S. 869, before us is an amendment of the Senator from Wyoming dealing with the cost of living as it relates to the veterans of the United States; am I correct, Mr. President?

The PRESIDENT pro tempore. The Senator is correct.

Mr. DECONCINI. Mr. President, I rise in opposition to the amendment of the Senator from Wyoming. First, let me say that the Senator from Wyoming indeed does not have to prove to anyone about his commitment to the veterans of this country. I have seen it over the 11 or 12 years he has been on that committee with me. He has been aggressive, he has stood up for the veterans time and time again, and I do not think anybody here will question his commitment to the American veterans in any way whatsoever.

My opposition here is not the opposition that some may say, that those of us who oppose this want this so we can use it as a train or in some other manner to load at the end of a session.

This amendment would eliminate congressional control over the annual cost-of-living adjustments in disability and pension compensation paid to service-connected disabled veterans and their survivors or dependents. It changes what we have done here for a long period of time, a long precedent that has worked well. There have been a few times it did not work well, but there are reasonable explanations for those exceptions. In its place, the Senator from Wyoming establishes a preset, automatic formula for the cost-of-living adjustment, the so-called COLA.

For many years, dating back to the late 1970's, the Veterans' Affairs Committee regularly has reported, and brought to the floor, legislation to provide an annual COLA. Annual congressional consideration of the COLA bills forces the Congress to take a fresh look at the adequacy of compensation rates.

Over the years, Congress has given veterans, especially seriously disabled veterans, more favorable consideration than they would have received under indexing. Indexing is not the perfect answer to all cost of living.

Rick Heilman, legislative director of the Disabled American Veterans, testified at the committee hearings on June 12 that:

The more seriously disabled service-connected veterans have fared far better at the hands of the Congress than they would have if their adjustments had been linked to the consumer price index. * * *

That is our job, Mr. President. Our job is to ensure that service-connected disabled veterans and their families are properly treated. That is our responsibility.

The proponents of this amendment assert that veterans would benefit from indexing the so-called COLA. Yet, the vast majority of veterans organizations strongly oppose this amendment, and they have good reason to do it. The national commander of the Disabled American Veterans noted in a November 5 letter that was sent to each and every Senator in this body, that annual congressional hearings on the COLA "ensure an active ongoing oversight over the program itself."

He expressed DAV's views that indexing "most definitively * * * is not in the fundamental and long-term best interest of our Nation's wartime disabled."

The American Legion, in a November 6 letter that went to all Senators stated:

* * * believes that adjusting compensation benefit levels is an action which deserves special and separate attention. When hearings on this matter are held each year, they sometimes provide the opportunity to examine other related benefit changes that may be necessary. In our opinion, this practice should continue.

The commander in chief of the Veterans of Foreign Wars said in a November 7 letter to all Senators:

We believe the compensation program is so important, so crucial to our Nation's disabled veterans, that it must be the product of a careful and considered annual review by the United States Senate, as well as the entire Congress.

The AMVETS national president stated in his letter of November 7 to all Senators:

Indexing would represent a grave injustice to our Nation's disabled veterans, their dependents and survivors.

The Paralyzed Veterans of America national president, in a November 7 letter to Senators, also urged rejection of the amendment to index the COLA because:

The current method of legislative increases has proven to be a very effective method for ensuring that veterans are not harmed by the effects of inflation.

Mr. President, the administration's longstanding indexing proposal has gained some backing recently in the wake of the delay in enacting the 1991 COLA. This seems like exactly the opposite reaction that this event should have produced. Although the fiscal year 1991 COLA was delayed last year, it was enacted promptly at the beginning of this Congress.

Along with landmark legislation finally addressing the 12-year-old, highly contentious issue of agent orange compensation.

This year, despite another attempt to block consideration of the committee's COLA bill, the Congress enacted a full—and timely—COLA bill which will be reflected in the January 1 checks.

Mr. President, it is important that Congress retain its direct control over the veterans compensation COLA. That is why I oppose this amendment. There are times when COLA's have been delayed, and some delays are the product of misuse of this process. If it is misused, the COLA's are delayed. I do not think we should throw that responsibility to the wind. The facts simply do not support that conclusion. Thus, I oppose this amendment and urge my colleagues to vote against it.

Mr. MURKOWSKI addressed the Chair.

The PRESIDENT pro tempore. The Senator from Alaska [Mr. MURKOWSKI].

Mr. MURKOWSKI. Mr. Presdient, I am certainly pleased to be an original cosponsor of the amendment offered by

my friend from Wyoming, Senator SIMPSON. As a former chairman and ranking member of the Veterans' Affairs Committee, I urge that my colleagues support this amendment, which would permanently provide automatic cost-of-living increases for certain vital Veterans' Administration programs.

Mr. President, service-connected disability compensation is provided to veterans in the form of a monthly check to those who have incurred injuries or disabilities during their active military service. Currently over 2 million veterans receive such compensation. Also the Veterans' Administration pays dependency and indemnity compensation [DIC] to survivors of service members who died on active duty or as a result of a service-connected disability. Currently we have over 300,000 survivors receiving monthly checks under this program.

Each year, Mr. President, since 1976, the Congress has provided a cost-of-living adjustment, or the so-called COLA, in compensation and DIC benefits in order to prevent the erosion of the value of these benefits which of course is caused by inflation.

Mr. President, we all agree that veterans and their survivors should, and must, receive a COLA. There is absolutely no disagreement on that on either side.

The issue is how the COLA should be achieved. I believe—and this particular amendment by the Senator from Wyoming provides—that the COLA's should simply be automatic. I believe that our veterans should simply be guaranteed an automatic COLA.

I believe that in the manner in which we currently have to structure it with the ability to add things on, simply addressed exposure to obligation that we have and, simply put, the present system of providing the COLA, in my opinion, as a Senator from Alaska, does not work practically anymore.

The present system requires that each year the Congress pass, and the President sign into law, legislation to authorize the COLA. In order for our service-disabled veterans to see this increase as part of their January 1 check, these actions have to be taken in advance, approximately in October of each year. Unfortunately, this does not always occur. For example, last year the Congress failed to pass a veterans' COLA, and our veterans did not receive their increases until April 1991, 3 months later. I hardly think that was promptness on this body in responding to veterans, and this would have been avoided had we had an automatic COLA system.

Such annual authorizations are not required for Social Security COLA's, or for COLA's in veterans' pensions. In these programs, the COLA's are tied to increases in the Consumer Price Index. That is, they are simply automatic. The system works. I believe the same system would work here. And it should be true, certainly, in VA compensation and DIC programs.

The opponents of this amendment will argue, and they have, that an annual COLA bill is somehow needed to provide a vehicle to pass other and perhaps more controversial veterans' bills. What we are not addressing is the reality that it becomes a Christmas tree.

This year there are eight major veterans' bills that have been enacted into law. None of these were tied to the COLA. The committee took action, the body took action, and we moved.

Now the opponents also argue that an annual COLA is needed to ensure that the Congress will have adequate oversight of this important program.

We are really not giving ourselves, or our colleagues, much credit, if we accept this argument. Since I have been a Member of this body, for the last 11 years, the committee led by Senator CRANSTON, Senator SIMPSON, and myself, and the remaining members of the committee are also very dedicated to ensuring adequate programs to meet the needs of our service-connected disabled veterans.

I simply do not believe that the members of the Veterans' Affairs Committee need to have an annual COLA authorization to force us to do our jobs. I think we have proven capable of doing our jobs.

Mr. President, I urge may colleagues to do what is best for our Nation's service-disabled veterans. Passage of the Simpson amendment would, and will, send a strong message to our veterans; and that message is it would say that veterans deserve to have a COLA provided to them in a timely manner, guaranteed, and that the Congress will not play politics with their benefits.

Mr. President, I thank the Chair, and I yield the floor.

The PRESIDENT pro tempore. Who yields time?

Mr. DECONCINI. Mr. President, I yield whatever time the Senator from Pennsylvania desires. Similarly, Mr. President, may I inquire, we are now allocating time on the amendment and I believe I control time on the amendment. Is that not correct?

The PRESIDENT pro tempore. Time is controlled on the amendment. The Senator from Wyoming controls time for the proponents, and the Senator from Arizona controls time for the opponents.

Mr. SIMPSON. I thank the Chair.

Mr. DECONCINI. Mr. President, I yield to the Senator from Pennsylvania.

Mr. SIMPSON. Mr. President, may I inquire as to the remaining time under the order?

The PRESIDENT pro tempore. Thirty-eight minutes and ten seconds for the sponsor. Forty-eight minutes and fifty-eight seconds for the opponents.

Mr. DeCONCINI. I yield whatever time the Senator from Pennsylvania desires.

The PRESIDENT pro tempore. The Senator from Pennsylvania is recognized for the time yielded.

Mr. SPECTER. I thank the Chair and my colleague from Arizona.

Mr. President, the current issue is a curious one and may be subject to some misunderstanding as to why some are opposing an automatic COLA, cost-of-living adjustment, because it would appear on first blush that everyone who is looking after the veterans' interest would want to be sure that the cost-of-living adjustment was automatically paid, especially since the disabled veterans did not get their cost-of-living adjustment for some substantial time this year.

But it is a curious reversal that those who are looking out for the dominant veterans' interest oppose an automatic COLA. I say this in some explanation because some may be watching on C-SPAN II and wondering how the sides are allocated here.

But those of us who are opposing the automatic cost-of-living adjustment are doing so because we want there to be legislation each year which will focus on the veteran and give an opportunity for any other measures besides the cost-of-living adjustment to be considered. So that in opposing the automatic COLA or automatic cost-of-living adjustment, this Senator is not opposed to a COLA, but simply wants to accomplish it on a year-by-year basis where there may be a focus of attention on other veterans' needs.

It might seem at first blush that a Senator who was opposing an automatic cost-of-living adjustment was antibenefits for veterans, that is not the case here. I think we all agree that there ought to be a cost-of-living adjustment each year as we have cost-of-living adjustments for Social Security beneficiaries, railroad retirees, and governmental retirees. But it is a question of whether it would have to be separately enacted.

After considerable thought, I have decided to oppose the amendment which my distinguished colleague from Wyoming has offered because I think that the veterans' position is preferable on requiring a focus of attention.

It may be, Mr. President, that it is much to do about nothing, as has been pointed out on a number of occasions today that there are 12 bills signed by the President this year for veterans. So, where you have a record and a history of veterans' issues being considered as comprehensively as they have been this year, therein you do not necessarily need the COLA bill up each year, and by the same token the arguments against the COLA bill disintegrate because it will not make any difference anyway. All of these issues are considered.

But the dominant, conclusive issue in my mind is the feeling of the veterans of America that they are being overlooked. And I have very strong evidence from my own State, from my travels in Pennsylvania, where on this Sunday I was at a veterans' hospital in Erie, PA, because the inspector general had made a determination that they might cut surgical services there. And now there is a concern or a scare in Erie about a cut in surgical services, Erie being one of 25 VA hospitals where that possibility exists, although the inspector general of the VA never even went there.

Within the past month, I was at the veterans' hospital in Lebanon, PA, which is one of eight hospitals where the inspector general said surgical services should be cut. And I can tell you, Mr. President, there is panic in Lebanon because if surgical services are cut—that is in Lebanon, PA, at the VA installation—those veterans will have to travel to Pittsburgh, Philadelphia, or Wilkes-Barre.

And one veteran whom I was visiting with at the time when his wife and daughter were there, in the course of a few questions, very, I hope, gently asked, broke down because of his concern that he might have to travel a long distance, not for himself, but because he would not have his wife and daughter available to visit him if they had to travel long distances. And we all know, as a practical matter, the importance of family visits in the process of convalescing. In addition to the humanitarian factor, it is a question of whether there is really convalescence and a proper mental attitude if you do not have your wife and daughter visiting the vet.

The issue the veterans have, Mr. President, is one of great worry that they are being overlooked. The mileage has been cut to 11 cents a mile. Allocations for tombstones have been reduced. Medical services are inadequate because of a stretched-out budget, and there is very little room within the Nation's budget for any additional funding for veterans' programs.

I might make a plea, considering who is in the chair at this time, the President pro tempore of the U.S. Senate, who is the chairman of the Appropriations Committee. This is a good time to make an extra plea, if I may, to the distinguished Senator from West Virginia for extra funding for the veterans because there is not enough.

But we all know that there is not enough on many, many lines in our Federal budget as we sit in room 128 and labor over insufficient funds for the appropriations process. But the veteran has a special position in our country. The veteran has a contractual claim, an obligation, which runs from the Government of the United States to the veteran. And that is not the same with all of those who receive Federal funds. But the veteran has a special standing.

And for 1 minute or perhaps 2 minutes, Mr. President, I will personalize the issue.

The first veteran whom I knew was a very logical candidate, my father, Harry Specter, who came to this country from foreign shores in 1911. I am always sure Senator SIMPSON is within earshot when I talk about my father because he often says if you bring Harry into the argument, it is an unfair advantage.

But we all have our own associations. And I have had a varied association in a varied number of roles. But when I was a youngster, I saw on the wall in our living room a plaque which my father had received as a wounded veteran. And it was a picture of, I thought, the Statue of Liberty knighting a soldier who I thought was my father in a World War I doughboy uniform.

He came to this country in 1911 from foreign shores, and 6 years later, in 1917, he was on his way to France. He fought in the Argonne Forest, was wounded in action, and he received shrapnel in both legs which he carried until the day he died. And I saw the legs of my father from the knee down on the inside, dark, as if black from shrapnel, which could not be removed from a human leg.

In 1932–33, when I was a youngster, I remember my father's anger at the failure to pay the veterans a bonus. If they had an automatic COLA that would have come up. It could have been handled by the Congress. That was the year of the famous march on Washington, where General MacArthur and Major Eisenhower led the troops which fired on veterans a few blocks from where we are present here today. And I think that at that time, I made up my mind, perhaps subconsciously, to try to help my father get his bonus. I think I have been on my way to Washington ever since. But I sense the same kind of frustration in other veterans which I saw in my father.

In 1937 or thereabouts, he bought a new Chevrolet automobile. My sister was driving one day down the roads in Kansas. My father was on the passenger side. He had his arm on the window and a spindle bolt broke on the front wheel, a defective part in the manufacturing process. The car turned over and my father's arm went out and was crushed. Thankfully, there was a veterans hospital in Wichita, KS, which did not ask him if his wound was service connected. They just took him in and put metal wires—they were not sophisticated in those days—and sewed him up and he got very good care. He could write with his right hand but not too well. We did receive a pension. I believe the pension was $23 a month in the midst of the Depression, which was all that kept the wolf from the door at the Specter household.

I am not going to tell you any more. There is a lot more to tell, but I will save that for another day and another argument, I say to Senator SIMPSON.

But I see across my State the look of anguish and the look of concern on the veterans.

In February, soon after I became the ranking Republican member on this committee and we were worried about whether there would be adequate medical facilities to take care of the wounded from the Persian Gulf, I took advantage of the recess. I had to be in Florida and Texas for other reasons, but I visited VA hospitals in Miami and Houston and Dallas, and then went to visit my family in Kansas and visited a veterans hospital again in Wichita where my father had been in 1937. I could see as I visited in other parts of the country the concern which the veterans have.

So I do not think it is any big deal, Mr. President, to say the COLA bill is going to come up each year to require the Congress to take a look at the issue and to give other Senators a chance when focusing on a bill. As we all know, any Senator can add any amendment to any bill at any time, a very problemsome rule which goes with the great powers of the U.S. Senators, but it will not be asking too much to consider a COLA each year.

We do not have a whole lot of extra money to go around, but on my consideration, as I see the problems around, I side with the veterans' groups who I think really do represent the veterans. That is why I favor the language of the bill which takes up the COLA on an annual basis.

I thank my colleague from Arizona for yielding me time.

I yield the floor.

Mr. SIMPSON addressed the Chair.

The PRESIDENT pro tempore. The Senator from Wyoming [Mr. SIMPSON].

Mr. SIMPSON. I yield, Mr. President, to the Senator from Florida, such time as he may require.

The PRESIDENT pro tempore. The Senator from Florida [Mr. GRAHAM] is recognized for such time as he may consume.

Mr. GRAHAM. Thank you, Mr. President. I appreciate the generosity of the Senator from Wyoming.

Mr. President, I am relatively new to this process. I served on the Veterans' Committee since 1987. I do not have the depth of experience that many of the colleagues who have already spoken bring to this issue. But I do bring the experience of the last 2 years.

And what is that experience?

In 1990, Congress failed to pass a cost-of-living adjustment for disabled veterans. We adjourned at the end of the session without such legislation having been enacted. Tremendous anxiety and apprehension fell upon the thousands of American disabled veterans and their families who anticipate that Jan-

uary adjustment in their monthly payments.

In my office, Mr. President, I received 418 letters in January from disabled veterans in Florida asking, "Are we going to receive our adjustment?" In February, even though we had acted early in the commencement of this Congress, 456 additional letters came in asking the same question, calling for equal and fair treatment.

We did act early this year to retroactively provide for a cost-of-living adjustment for disabled veterans. You would think, Mr. President, that we had learned our lesson, having been through that experience once, that we would not want to come close to the precipice of doing it again. We had not.

In October of this year, the Secretary of the Veterans Department, Mr. Edward Derwinski, announced that if we did not act within a matter of days, if we did not act before October 24, that we were going to miss the opportunity to have the January 1992 checks adjusted; that is, that if we did not have legislation adopted by that date, that it would be too late to get the computers reprogrammed and the checks reset for delivery in January of 1992.

It took that announcement to spur us into action. And even then we missed the target by a couple of days. But apparently we were close enough that in fact the January checks will be so adjusted.

So in 1990 we missed. In 1991 we almost missed taking action to adjust the cost of living for disabled veterans.

Mr. President, I sent out some cards to veterans who had written me. During the early months of 1991, we received 969 letters or postcards on this subject. We wrote to many of these veterans in Florida and received back many responses.

I would like to read one of those responses, Mr. President, and will ask it be printed in the RECORD at the conclusion of my remarks.

It is from a veteran from Miami Beach, FL, Mr. Robert B. Greene.

Mr. President, I ask unanimous consent Mr. Greene's letter be printed in the RECORD immediately upon the conclusion of my remarks.

The PRESIDING OFFICER (Mr. LIEBERMAN). Without objection, it is so ordered.

(See exhibit 1.)

Mr. GRAHAM:

DEAR SENATOR GRAHAM: I received your postcard outlining 1992 COLA for disabled veterans. I agree with you 100 percent.

I have been urging Members of Congress, House and Senate, that all Government-sponsored pension should get the same COLA each year—automatically, without voting on each one.

Those should include Social Security, veterans, military, Civil Service, black lung, railroad retirement, CIA, et cetera.

These should be equal and automatic.

Truly,

ROBERT B. GREENE.

Our system has caused the Mr. Robert Greenes of America to feel as if they have been abandoned.

I recognize everyone here is concerned about veterans. We all want to treat them as respectfully as possible. And I agree with the statement made by the Senator from Pennsylvania that the relationship between the American people and our veterans is in the nature of a contract. These individuals served our Nation with certain expectations. They knew that they were going to put their lives at risk and this very group of Americans in fact sacrificed a portion of their body for the service and the protection of the freedom of America. These particularly deserve to see that that contract is maintained.

So the question here is not whether one group or other is more concerned, more committed to the welfare of America's veterans. It is what is the most appropriate means of doing so.

In my opinion the most appropriate way to do so is as Mr. Greene suggested, and that is to provide annual, automatic, equal cost-of-living adjustments for veterans, disabled veterans, as we do for all others who receive annual adjustments of their payments from the Federal Government.

There have been a number of reasons given as to why the current system is superior, why it is worth accepting this "Perils of Pauline" anxiety that we have subjected veterans to in 1990, and almost in 1991.

I think the reality is that the compelling argument for continuing the status quo is to have a must pass bill relating to veterans that each year can be used as the basis of considering a wider range of veterans' issues. The issues which have been added to that bill in the past, such as agent orange, I think are issues of importance and worthy public purpose—sufficiently important, sufficiently worthy that they could pass on their own merit. They do not require being annexed to a cost-of-living increase bill in order to be given serious consideration.

I have been thinking about what is it that has caused the American people to express in so many different ways their lack of confidence in, their anger at, their dissatisfaction with this institution. This week I was visited by the gentleman who is heading the term-limitation proposal for Florida, a proposal that would limit the terms of State, executive, and legislative officials and congressional Members. I asked him, "In all of your visits around our State, talking to people, what is it that makes persons so upset they are signing petitions to limit terms?"

He thought about that issue, and his response was, "The people feel as if Government is not responding to the things that they are interested in. There is a disconnect between what is important in their lives and what they see Government as doing."

I think that is an important part of the diagnosis of why there is so much public dissatisfaction with Government. In extending that analysis, I wonder why some of the things this Congress has done in recent years have fallen into such public disrepute. I will just mention three items, two of which happen to have occurred before I arrived and a third since I have been in the Senate:

In the early 1980's, the efforts to salvage the Nation's savings-and-loan system, the so-called Garn-St Germain Act, which now has been seen as being a major contributor, a culprit in bringing down a once-proud system of savings-and-loan institutions;

In 1986, a tax bill which was passed as a means of eliminating inequities, of freeing capital, of improving our economy, which is now being targeted as one of the contributors to our current state of economic distress;

And in 1988, the passage of the catastrophic health-care bill which was intended to aid older Americans by giving them some greater protection against catastrophic illnesses.

What do those three enactments, and others we could identify, have in common? Why did they all come into such disrepute that in the case of the catastrophic health care, within a few months after it was implemented it was repealed? I believe they have some common characteristics. One of those is the effort to roll too many misdiagnosed, insufficiently analyzed propositions into one bulky bill, and then ask the Congress to vote yes or no on that one proposition.

A second is that in all of those instances, and specifically as relates to catastrophic care, there was an insufficient dialog with the American people before we acted, an insufficient effort to ask the American people what they thought the problem was, what they thought appropriate prescriptions would be.

The reason for this digression is I believe the fundamental rationale for maintaining an annual legislation for the sole purpose of providing a cost-of-living adjustment for disabled American veterans is so that we can fall exactly into that same legislative trap with legislation relative to America's veterans, so we can roll into one big indistinguishable mass of legislation, a bill whose engine is the need to pass an annual cost-of-living adjustment for disabled veterans and the baggage behind that engine is a whole series of unanalyzed, ununderstood, and nondiscussed with the American people—specifically the American veteran—what the significance of all those proposals really is.

I believe that is not good government, and I believe that good government is represented by this legislation which will take this issue out of that annual effort to use the engine of the

cost-of-living adjustment for other purposes, to say to American veterans we are going to treat you just like we treat those who receive Social Security, those who receive military retirement, and a whole array of other Federal benefits to persons who have served or have otherwise gained the right to Federal payments.

I believe that it would be good government by taking this process of the annual cost-of-living adjustment out of the potential to be used as the means by which a veritable cornucopia of inadequately addressed proposals will pour forth.

So, Mr. President, for those reasons, I support the amendment as offered by the Senator from Wyoming. I hope that his amendment is seen for what it is intended to be; and that is, an effort to assist the American disabled veteran by giving him or her an assurance, by giving him or her a reprieve from the annual apprehension of the current system, and by causing us to look thoughtfully on an individual basis at other important issues that relate to the American veteran, and not assuming that the only way in which the American veterans' needs can be met is by rolling those needs behind the engine of an annual cost-of-living adjustment.

Thank you, Mr. President.

EXHIBIT 1

MIAMI BEACH, FL,
November 12, 1991.

Senator BOB GRAHAM,
Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: I received your post card outlining 1992 COLA for disabled veterans and agree with you 100 percent.

I have been urging Members of Congress House and Senate that all Gov't. sponsored pension should get the same COLA each year—automatically without voting on each one.

These should include Social Security, Veterans, Military, Civil Service, Black Lung, Rail Road Retirement, CIA, etc.

These should be equal and automatic.

Truly,

ROBERT B. GREENE.

The PRESIDING OFFICER. Who yields time?

The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, I want to surely thank my friend from Florida. He represents a State of great diversity, tremendous problems encountered with people seeking to live there because of the lifestyle, dealing with issues of senior citizens, veterans, and immigration. There is no one who has a more extraordinary diversity of population to deal with. So when he speaks on this issue and on behalf of this amendment, I am very, very appreciative because I know of the large veterans' population that is in the State of Florida.

I hear my friend clearly. They want their check on a regular basis without waiting for political gimmickry, which has taken place here for the past three sessions. That is what this is about. I thank the Senator from Florida very much.

It is very interesting to hear the debate. I think we are coming to the conclusion.

Mr. President, we have heard some of the arguments now presented by Senator DECONCINI and Senator SPECTER, and they do arguably. I regret I was diverted for a few moments during that time. We were working on trying to press forward on the conferees on the crime bill and trying to get to that issue as soon as we can. I happen to be deeply concerned, with Senator THURMOND and Senator BIDEN, on that issue. That was the purpose of my absence.

I think I would just add that as we hear the arguments about what veterans want—as it comes from the other side—I think we want to preface that with "veterans organizations" want, because I think there is a difference. I think the average veteran wants his or her COLA at a known time, at a time they can plan for it. In this situation, it would be December 1 of 1992, and every year thereafter, in time for the Christmas season; a COLA on December 1 every year, automatically indexed to the consumer price index. What is wrong with that?

I do not know of anything wrong with that, but it will be a very difficult vote, because I do know the veterans—remember, there are three types of veterans organizations. There are "veterans organizations," "professional veterans organizations," and "professional fundraising veterans organizations."

The latter often speak in ways which are simply to imply that the Congress never does anything ever for veterans. Nothing, even though the budget is $32.5 billion; even though there are only 27 million of us and a declining amount; even though we have added to them from the heroic people of Operation Desert Storm. But that is not a large increase in the veterans population, for them to even come into veterans organizations. Certainly they will be eligible for the health care system, the vet centers, and all of the remarkable things that are provided to veterans in the United States. Please know that that is the way it works.

So I think what you see is what we also began to see in the Thomas hearings, as anguishing and disruptive as they were. We see groups, and that is the national groups, who are out of touch with their membership. And I really believe this is another example of that.

This is an anathema to the pros, to the executive directors, to the chaps that do the work, men and women, in the professional fundraising groups and the veterans groups and the professional veterans groups because this is a great roll of the dice involved here that used to work, and they hope it will work again. The roll of the dice is "you should separate the veterans' COLA from the rest of the COLA's because the veterans used to get more than the CPI."

There is a reason for you to consider that has not yet been presented in the debate—the indexing of social security COLA's. I think the last time that happened was the year I arrived here, or the year before. It was a common procedure, especially in those times when the cost-of-living allowance was Social Security sometimes went 7 percent, 9, and at one time in the seventies, if I recall, it was a 12.9 COLA. That is when we had to correct the Social Security System because the replacement rate, the disruption of that indexing, was placing the Social Security system at risk. In fact, I think I recall that perhaps the COLA on Social Security in the early seventies may have even risen to 13.7. Those are real issues.

So in those years, the professional veterans groups were doing well. I have no objection at all to tying the Consumer Price Index and the COLA just where we do with Social Security and other general Federal benefit structures, or entitlements, if you wish to use that term.

So the veterans' benefits or disability COLA's have never been higher than the Social Security recipients' when indexed to the CPI since 1978. I think we can all see that the COLA for veterans is never going to go any higher than the CPI, whether or not it is in this measure or whether or not they deal with the two independently; at least not in these times of deficit and budget difficulty.

In fact, in the Gramm-Rudman-Hollings proposal, we were able to give a benefit to veterans which we give to no other group in society because their budget cannot go down over 2 percent the first year and 1 percent the next year. We did that with regard to a sequester. It took care of them in a way we have never taken care of any other segment of society. And I helped vote on that. In fact, ALAN CRANSTON helped put it together.

I was here that night, and I believe there were staff here that night, and are still here, who remember that we did as a special advantage to the veterans. We set them in a better position than anyone else in America, in the event we went to the dramatic—dramatic—position of sequester.

So what we are seeing from the veterans organizations, or the professional veterans organizations, who are resisting this is that actually they are hoping they can get a larger COLA. That will not happen. I think all would admit that in these times of budget difficulty, that is not going to happen.

And so there are really two things that are troubling: that and the real issue, which is so evident, that for 3 years, we have delayed these COLA's for veterans. Then we go back and

make it retroactive, and then they get their check in February or March, and other times, they do not know when they are going to get the check. And what is the reason for that?

The reason for it is, as we stand here on this floor, with the clock just about to hit midnight of the final hours of the session, suddenly we are dealing with eight issues that we have dealt with in committee but could not pass out of committee. At this holiday season, they would be known as "turkeys." And they take them and they plaster them on the bill in the middle of the night on the must-pass, fast freight veterans COLA. They are always contentious and they lock us down, and they are always, as I say, about something pretty potent—agent orange, some kind of new presumptive disease, always terribly contentious, that we were never able to pass out of committee.

And that, then, has caused the conferees or the potential conferees, as we bat them back and forth between the Chambers, to just say forget the COLA; we are not going to pass that piece of legislation just because it is tied to that COLA bill. Therefore, for 3 years in a row the veterans of America have been deprived of a specific date to receive their COLA, like the Social Security recipients receive their COLA on a specific date and every other recipient of a Federal entitlement, indexed to the CPI. These recipients have the knowledge of when they will receive their COLA's so they can do their personal planning. The Senator from Florida is absolutely correct.

To that is what this amendment does. That is what we are trying to do. I think it is important we do that. I think the argument that veterans want their COLA to be a bill that is voted on with congressional oversight, would be fine. If you want to give us a piece of legislation that says we will give the congressional oversight as long as we do not hang everything in the world on the bill, I am ready to cosponsor that measure. I would be glad to do that. The veterans want their dollars when they need them, and they deserve them, and it is called a COLA. I have never voted against a single one of them. They want it adjusted to the Consumer Price Index. They want it to be automatic.

Those who do not want it to be automatic are those who are always working for additional legislation of whatever kind, of whatever kind it may be, simply because that is their job. That is how they justify their existence, their money, staff salaries, compensation plans that they have for their staffs—a huge burgeoning bureaucracy in itself. I urge you to take a look at those organizations' pamphlets and brochures, and they will send them to you. I ask you to write to one of the veterans organizations that you might belong to, ask for their statement, their net worth, their audited report of what they take in, especially with fundraising, and what they pay out and where the money goes, how much is on hand, how much really goes to veterans, to outreach, to spouses, to children. You would be surprised, totally surprised. I have been, in the years I have been here.

I will say that they are accessible people. They will visit with you. I especially have visited with people in the DAV. Butch Yoekel, a very active and vigorous man, he and I have shared a great deal of interesting correspondence and commentary over the years. They are accessible people: the Legion, the American Vets, any group you wish to discuss it with. They will show you the books. And then you can ask the questions: What is it you do with the money that comes to you? Especially when sometimes the letters that are soliciting the money are often based on the impression that the Congress does nothing for veterans. So I think that is worthwhile to ask the Vets organizations' for their brochures. I think it is time to look at those issues, especially as we get to crush time regarding the issues of deficit and the issues of budgeting and debt limits.

I think you want to remember that the veterans themselves really do not want their COLA's in April or March or January or February. They want them on a standard date like everybody else in America. And they know that they can get that, the average veteran knows that. He has been able to read through some of the angst and hype in the way this has been expressed. He knows it would be a nice thing to get that good old COLA check on December 1 of each year and each year thereafter.

I will tell you, too, as you review those audited statements of the professional veterans fundraising groups, you will find that the salaries of some of the executives on the professional fundraising veterans organizations are higher than those of the U.S. Senate. Now, that is an interesting item, just something I thought I would share with you. It is a curious thing and it is real.

And so, as we wind down here, let us just summarize that this is to prevent what has happended for 3 years in a row, something that happened due to political wranglings over contentious issues that should never have been attached to a must-pass COLA.

Senator SPECTER and Senator AKAKA, two people I greatly respect, made the case for the amendment, because they are right. The veteran is a special constituent to all of us, and we cannot, nor have we ever, turned our back on veterans. But when we stall and haggle over politically contentious issues that have not gotten to first base in committee, that should not be on the COLA bill; we stall the bill, and we prevent the veteran from receiving a timely and deserved COLA.

Finally, I have the greatest regard and respect for Senator SPECTER. In my mind he is one of the most remarkable Senators in this place. He can deal with any issue. He is a superb lawyer. He has a superb ability to cut through the issues and present his case in an understandable and hearable way, and that is sometimes difficult for a man who has a mind that races and functions like Senator SPECTER's.

I serve on two committees with him, and that has been my pleasure. But I have an awesome feeling every time he brings up a Specter, it is Harry Specter, because he must be the great image of Americana. And I have heard the story of Harry Specter. He was a great businessman and an entrepreneur, and he took his little family to Russell, KS, Where two remarkable Americans grew up, ARLEN SPECTER and BOB DOLE. And so we shall just present the matter before our colleagues and see what occurs as to this and then proceed on with a very important bill.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair. Just a word or two in addition.

I want to thank my gracious colleague, Senator SIMPSON, for his very kind comments. Senator SIMPSON and I have been on the same side of most of the issues in recent days. We have had a unique kindred for the past several weeks, although we worked closely for the 11 years I have been here. Any I appreciate his kind comments about my father, the veteran whom I talked about earlier.

I just do want to point out that he was not a great entrepreneur. He came from foreign shores. He was in World War I. He sold blankets to the farmers in the winter, traveled through the West, Nebraska, Kansas, learned the English language, sold cantaloups in the summer, and he established a junkyard in Russell in 1941.

Senator SIMPSON asked me if it was true he moved around a lot. He lived in Russell, KS, for 5 years, which was as long as he lived in any place while he was there. He became a friend of Don Dole, who is the father of Senator BOB DOLE. And it is true that Senator DOLE and I come from the same little town in Kansas. Russell has 4,998 people. It used to have 5,000 until DOLE and I left town. But I just do not want anybody to get the idea my father was an entrepreneur because I intend to talk about him some more on other issues.

Again, I thank the Senator.

Mr. DECONCINI. Mr. President, I wish I had come from Russell, KS, and then moved to Arizona, of course.

Mr. President, Senator DASCHLE had planned to come over and make a

statement on this bill. He was unavoidably detained in a hearing concerning Indian affairs. He expresses his regrets he cannot be here.

Mr. President, I ask unanimous consent copies of the veterans organizations letters in opposition to the amendment of the Senator from Wyoming be printed in the RECORD.

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

DISABLED AMERICAN VETERANS,
Washington, DC, November 5, 1991.

Hon. ALAN CRANSTON,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR CRANSTON: You recently received a "Dear Colleague" letter urging your support for an amendment (to be offered to S. 869) which would require all future Department of Veterans Affairs [VA] service-connected disability and death benefit adjustments to be achieved through "indexing," that is to say, no longer legislated by the Congress but linked to an automatic formula responsive to annual movement in the Consumer Price Index [CPI].

As National Commander of the 1.3 million-member Disabled American Veterans—beneficiaries of these disability payments—I urge that you vote against this amendment.

The DAV has no quarrel with the apparent intent of the amendment * * * to ensure timely adjustment of these entitlements in line with the loss of purchasing power caused by inflation. But the fact of the matter is, with very few exceptions over the years (last year's cost-of-living adjustment delay being one of them), the Congress has indeed provided timely benefit increases which have kept pace with the cost of goods and services. The compensation increase bill recently approved by the Congress and now at the White House is the 18th consecutive legislative adjustment in as many years.

Equally important to the DAV is the fact that annual congressional hearings held in consideration of compensation increase legislation ensures an active, ongoing oversight over the program itself. This, in turn, has resulted in meaningful, overall maintenance and improvement of these benefits. In our view, indexing of compensation rates—no matter how well intentioned—would remove this most important program from active congressional scrutiny. This we believe would be most undesirable.

In summation, the DAV appreciates the intent of the above cited amendment, but we most definitely are of the opinion that it is not in the fundamental and long-term best interests of our nation's wartime disabled and their system of benefits and services. We urge that it be rejected by the Senate.

I do thank you very much for your kind attention to this letter.

Sincerely,

CLEVELAND JORDAN,
National Commander.

THE AMERICAN LEGION,
Washington, DC, November 6, 1991.

DEAR SENATOR: Within the past several days you have received a letter, signed by six of your colleagues, asking you to support an amendment authorizing automatic cost-of-living adjustments for recipients of VA disability compensation. The American Legion opposed this idea, and we urge you to reject the amendment when it is offered.

The concept of automatic COLA's for veterans with service-connected disabilities is not a new one. It has been considered many times by the Veterans Affairs Committees in both Chambers of Congress, but it has never been approved by those panels.

Our organization believes that adjusting compensation benefit levels is an action which deserves special and separate attention. When hearings on this matter are held each year they sometimes provide the opportunity to examine other related benefit changes that may be necessary. In our opinion, this practice should continue.

The process of approving a separate compensation COLA measure need not be a difficult process. In fact, it should be a relatively simple one which can be done without encumbering the Senate agenda. If the Senate can pass 18 commemorative measures in rapid succession as it did on November 1, it can certainly find a floor agenda window that is sufficient to pass a compensation COLA bill in a timely fashion. That is precisely what you and your colleagues did on October 28 when you approved an amended version of H.R. 1046.

There is one final point that deserves consideration. In the "Dear Colleague" letter you received, it was stated that those who oppose the automatic COLA idea would argue that a separate annual COLA bill is necessary to serve as a vehicle for other veterans legislation. You can see The American Legion—as one of those opponents—has not used that argument. It is rather ironic, however, that the automatic COLA supporters plan to use S. 869 (a veterans health care bill) as a vehicle for their amendment.

Your attention to our views on this very important issue is deeply appreciated.

Sincerely,

PHILIP RIGGIN,
Director,
National Legislative Commission.

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Washington, DC, November 8, 1991.

Hon. ALAN CRANSTON,
U.S. Senate, Washington, DC.

DEAR SENATOR CRANSTON: It is our understanding that when S. 869, the "Veterans Health Care Amendment Act of 1991", comes to the Senate floor, several Senators intend to offer an amendment that will provide for indexing the cost-of-living allowances [COLA] for America's service-connected disabled veterans to the Consumer Price Index. On behalf of the 2.2 million men and women of the Veterans of Foreign Wars of the United States, I urge you to reject this amendment to S. 869 when it is offered.

While we certainly agree with the proponents of the amendment that COLA's should be received in a timely manner, we do not agree with their assessment that the current system does not work. Our assessment of the problem lies in the ability of a couple of Senators to obstruct the current system in order to work their own will at the expense of our Nation's veterans.

We believe the compensation program is so important, so crucial to our nation's disabled veterans that it must be the product of a careful and considered annual review by the United States Senate as well as the entire Congress. Notwithstanding the events of last year and the most recent actions of one or two Senators to block the COLA from being considered on the Senate floor, we believe the Congress has been compassionate and fair in addressing the needs of our nation's service-connected disabled. We also believe as soon as the compensation program is indexed the Senate's essential oversight role of the compensation program will cease to exist. This is clearly the case with the VA pension program. Since it was indexed in 1978, one can count on one hand the number of hearings that have been held on the pension program. Further, a very small number of laws have been enacted to liberalize and improve the benefits veterans receive under the pension program since it was linked to the CPI.

In closing, I would urge you to reject the proposed amendment to S. 869 that would index the COLA to the CPI. While we certainly agree with the stated goal of the authors of the amendment, we are in disagreement with their means of achieving that goal.

Sincerely,

ROBERT E. WALLACE,
Commander-in-Chief.

AMVETS,
Lanham, MD, November 6, 1991.

Hon. ALAN CRANSTON,
U.S. Senate, Washington, DC.

DEAR SENATOR CRANSTON: I would like to express AMVETS' sincere appreciation to you for fulfilling your commitment to America's disabled veterans by passing the 3.7 percent Department of Veterans Affairs [VA] cost-of-living adjustment [COLA] increase for fiscal year 1992. Your concerted efforts have regained a significant amount of veterans' faith and confidence.

Also, on behalf of AMVETS, I wish to express our concern for a proposed amendment to be offered on the Senate floor during discussion of S. 869, the "Veterans Health Care Amendments Act of 1991." The proposed amendment would mandate indexing VA COLA to the annual Consumer Price Index [CPI]. AMVETS believes that indexing would represent a grave injustice to our nation's disabled veterans, their dependents and survivors. We strongly solicit your support in blocking any legislative initiative which would tie VA compensation to the CPI.

Reacting to the untimely delay in the passage of the fiscal year 1991 COLA, a few legislators drew the conclusion that the best way to prevent recurrence of the COLA disaster would be to index VA compensation increases to the annual change in the CPI. While this would provide a simple solution, it fails to fully acknowledge the severity of the problem. Indexing would in no way allow for the consideration of the daily living requirements and medical needs of disabled veterans which far exceed those of the general population. Compensation is of such vital importance to our nation's disabled veterans that it merits, indeed demands, the annual review of the two full Veterans Affairs Committees, not merely a mandated automatic determination.

We firmly believe that year to year VA compensation beneficiaries deserve the informed oversight of the House and Senate Committees on Veterans Affairs. The dedication of these committees to represent the best interests of American's veterans is crucial to bicameral resolution of the complicated issues relating not only to COLA but the full range of initiatives which affect the benefits and entitlements of VA beneficiaries. Who more than our disabled veterans deserve the devoted attention of these committees wherein the power to formulate legislation on their behalf resides.

It is time for Congress and the administration to think logically and compassionately, and to act realistically and faithfully, in meeting the Nation's obligation to our disabled veterans. To these men and women and

their families, indexing COLA to the CPI would be step in the wrong direction. Such a measure would breech the trust our veterans have in our Government to honor this vitally important, earned entitlement.

Our cooperation and assistance are at your disposal as together we work to protect the rights and benefits of the disabled veterans, and all veterans, of our great Nation.

Sincerely,

JAMES L. SINGLER,
National Commander.

PARALYZED VETERANS OF AMERICA,
Washington, DC, November 7, 1991.

Hon. ALAN CRANSTON,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR CRANSTON: On behalf of the members of Paralyzed Veterans of America, I request your strong opposition to an amendment that is being offered to S. 869, the Veterans Health Care Amendments Act of 1991," by Senator Alan Simpson. Senator Simpson's amendment seeks to index the annual increase in compensation and Dependency and Indemnity Compensation [DIC] paid to veterans who have sustained service-connected disabilities and their survivors.

Paralyzed Veterans of America certainly understands the need for payments to veterans and their survivors to keep pace with the effects of inflation; however, the current method of legislated increases has proven to be a very effective method for ensuring that veterans are not harmed by the effect of inflation.

Additionally, by maintaining the present requirement for annual congressional review of the adequacy of the compensation and DIC rates, a mechanism is in place by which the overall efficacy of the programs can be assessed. This process has, over the years, ensured that not only were timely increases provided veterans and survivors but that there occurred an annual review of veterans' program and benefits by the Congress of the United States.

Again, I ask that you oppose the well intentioned amendment by Senator Simpson. It is unnecessary and will preclude opportunities for needed oversight and modification of the benefits and programs that serve the veterans of this Nation.

Sincerely,

VICTOR S. MCCOY, Sr.,
National President.

Mr. DOLE. Mr. President, I rise today in support of Senator SIMPSON's amendment that would ensure that veterans are given the protection of an indexed cost-of-living-adjustment.

This legislation makes sense for our veterans and their dependents. It is just not right that veterans COLA's be held hostage by the legislative process. The fact is that the veterans COLA has been late for the past 3 years in a row. Last year, because of wide differences in policy, a veterans COLA was not passed in the Senate. Differences in policy are always here in the Senate—but it is not proper that the rightful benefits of our veterans be held up for those differences.

Because we did not have the opportunity to vote for the veterans COLA in 1990, it was not until January of this year that we could pass a benefit package for veterans and their dependents. That cost-of-living adjustment did not show up on veterans benefits until April. For our Nation's disabled veterans and their dependents—that is just too long to wait. In my view, veterans have sacrificed and given too much to our Nation to make them wait.

There are those that claim an indexed COLA will be a disservice to veterans but in my view that just isn't right. I cannot subscribe to the theory that the veterans COLA is the only legislative vehicle that can be used to protect veterans. I do not believe that anyone will abandon veterans. I do not believe that millions of disabled veterans will be ignored. And I will not accept the idea that the Congress won't continue to meet the health care needs of veterans without the ability to withhold and delay their benefits.

Mr. President, there are many different opinions on how to best serve the needs of America's veterans. With the changing veteran population and demographics, new programs will be needed and new services required to ensure that no particular group of veterans will be excluded. But this amendment for an indexed COLA is for all veterans. It affects each and every veteran and their dependents each and every year. That is why I have supported an indexed veterans COLA in the past—and that is why I stand in support of it today.

Mr. THURMOND. Mr. President, I rise to voice my support for this amendment which provides for automatic cost-of-living-allowances [COLA's] for America's service-disabled veterans. Under this amendment, future annual COLA's will be tied to the Consumer Price Index. I am pleased to be a cosponsor of this important amendment.

Mr. President, when the annual COLA was introduced this year, so many unrelated provisions were added to it that passage of it to ensure that our deserving veterans received timely adjustments was threatened. Secretary Derwinski had to express the urgent need to pass a clean COLA for veterans so that the VA would not have to make retroactive adjustments for the third straight year. Passage of a clean COLA was imperative to ensure that our veterans and their families received their adjustment in a timely manner. I am pleased that we were able to pass the 1992 COLA in a timely manner. However, we must act today to ensure that future COLA's are not held up.

Mr. President, the current system of annual authorization of these increases is no longer adequate. America's disabled veterans and the surviving dependents of veterans who have died in or because of military service deserve more certainty about their COLA. The COLA's for compensation should be guaranteed.

They should not be held hostage by added language unrelated to the annual adjustment which cannot be criticized except at great political risk. Compensation for veterans disabled in service is too important. We must provide this guarantee to our disabled veterans and their families. I urge my colleagues to vote for this important amendment.

Mr. SANFORD. Mr. President, I rise today to speak against the amendment to S. 869, offered by the Senator from Wyoming [Mr. SIMPSON]. This amendment would automatically index the cost-of-living adjustment [COLA] for our Nation's veterans who suffer service-connected disabilities and the survivors of certain disabled veterans to other key economic indicators of our economy.

Mr. President, no one in this body denies the sacrifices that the veterans of the U.S. Armed Forces have made for our Nation. No one denies that it is the duty of the Congress to ensure proper compensation for our veterans. And I think that on the surface, the intent of this legislation is noble—to guarantee these veterans a rate of COLA increase tied to the Nation's key economic indicators; namely, the Consumer Price Index, rather than depend on the Senate to address these needs on a yearly basis. Indeed, if the Senate was not capable of performing its duties of oversight of veterans compensation programs, I might support this type of guarantee. However, the Senate is more than capable of performing these duties, and has historically done a good job of doing so. And in fact, if we look under the surface of this amendment, we see it is actually detrimental to the cause of the veteran because it would deny the Senate an opportunity to hear from veterans and conclusively debate the issues of their concern.

Every year, this body has the opportunity to debate the issue of a COLA for veterans of our Nation's armed services who suffer service-connected disabilities, as well as survivors of certain disabled veterans. I look forward to that debate. I look upon that debate as an opportunity to honor our veterans, to bring them and their needs once again to the attention of our Nation. The COLA debate allows the Senate to give the issue of compensation for our country's veterans the attention it deserves. This legislation also serves as a forum from which all of the issues that are of concern to our veterans can be heard. This issue is not just about money. Veterans who once put their lives on the line for this country—for you and me and all of the values and principles we hold sacred as a nation—now face so many other issues besides simply the amount of a yearly cost-of-living increase. They deserve a platform from which we the Senate, and the Nation can hear all of their needs.

We all know that a COLA for service-connection disabled veterans of the U.S. Armed Forces is one of a few pieces of legislation that is brought be-

fore this body without fail, every year. Why, then, should we agree to strip our veterans of this guaranteed opportunity to voice their needs and opinions on a yearly basis? Are some Members of this body tired of hearing, once a year, from our Nation's veterans? Will we toss them this guarantee in hopes that the compensation issue will slowly disappear, or that we not have to hear from them on any other issues? I am not willing to buy off the silence of our veterans in this manner—and they are not willing to be sold.

Mr. President, I have heard from many national veteran's organizations such as the American Legion, AMVETS, the Disabled American Veterans, the Paralyzed Veterans of America, the Veterans of Foreign Wars, as well as many other groups and individuals from my home State of North Carolina, all of whom oppose this legislation. These groups and individuals realize that such a measure would deny them the opportunity they now enjoy to have their concerns brought before the Senate in a manner in which these issues may be debated and acted upon. These groups trust the Senate to carry out our duties of congressional review of compensation for veterans, and they do not desire to have this process automated, depersonalized, and removed from public view.

Again, Mr. President, I strongly oppose this legislation. I urge my colleagues to recognize that this measure is not necessary, it is not supported by those it is intended to help, and it should not be supported by the U.S. Senate.

Mr. JEFFORDS. Mr. President, I am pleased that today the Senate is considering S. 869, the Post-Traumatic Stress Disorder Improvement Act of 1991. This legislation recognizes the alarmingly high percentage of combat veterans that suffer from posttraumatic stress disorder [PTSD] and that very few veterans ever receive treatment for this debilitating illness.

S. 869 provides fast-track eligibility for PTSD treatment. When a veteran of a combat theater is diagnosed as suffering from combat-related PTSD, it allows the veterans to by-pass the adjudication process and receive priority care. This will streamline the system and therefore provide more veterans with treatment.

In addition, S. 869 will authorize the expansion of readjustment counseling services at vet centers to any veteran who served during a period of hostility. We have provided such treatment for Vietnam-era veterans, and very recently, with enactment of the Persian Gulf War Veterans Assistance Act, extended eligibility to post Vietnam-era veterans having served during a period of conflict. However, we have not provided for those who served prior to the Vietnam era.

Senator SIMPSON is offering an amendment to S. 869 to automatically index the cost-of-living-allowance [COLA] for service-disabled veterans and the surviving spouses of veterans who have died in, or as a result of, military service. I am supporting this amendment.

Congress has already tied the Social Security COLA to increases in the consumer price index. We have also removed veterans' pensions from the annual authorization process by tying increases in that program to increases in Social Security benefits. Currently, the only recipients of compensation whose cost-of-living increases are dependent upon congressional action are veterans that have been disabled as a result of their service in the U.S. military and the surviving spouses of veterans who died as a result of their service.

I realize that a majority of the veterans organizations oppose this amendment. With an automatic COLA, they say, it will be difficult to pass much-needed veterans legislation. I do not believe this is true. This year, 12 veterans bills have been enacted, including the long-awaited Agent Orange Act of 1991, without being tied to a COLA bill.

Furthermore, Vermont veterans have indicated to me that they would prefer to be able to depend upon their annual COLA increase showing up in their checks at the first of each year. While a COLA increase may not seem like an amount of money that will make a great deal of difference one way or another, unfortunately, for many disabled veterans living in financially tight circumstances, they depend upon receiving this increase in a timely manner.

Mr. DECONCINI. Mr. President, just to sum up, I think it is a little misleading to disguise or to infer that this is some kind of a big national plot by national lobbyists here from Washington, DC, that has fanned out throughout this country. That just is not the case.

The people who like to have the Congress look at this cost of living every year are the veterans of this country. Why is it? I will tell you why it is. Because we are sensitive to them. We pay attention to them most of the time. We listen to them. They want an opportunity to come and argue their case. They might disagree with a CPI some day. Veterans are different and ought to have the right to come before our committee and request that Congress consider whether the CPI is wrong.

That is what we are preserving here, the right to review any COLA. If we decide we want to make it lower or higher than the CPI, Congress can correct mistakes. I think for the Congress to give this authority to an administrative body is not in the best interests of the American veterans. It is also not some big plot of national lobbying groups that are out there trying to keep this under control.

Mr. President, I am prepared to vote on the amendment if the Senator from Wyoming is. Maybe he wants the yeas and nays.

Mr. SIMPSON. Mr. President, I believe those who are going to speak on the other side of the aisle have placed their statements in the RECORD. So I believe on the notice, if no one else is here to debate, I am ready to yield the remainder of the time. I would like the yeas and nays on the amendment. 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. SIMPSON. Mr. President, I thank the floor managers for their courtesy.

Mr. DECONCINI. Mr. President, I yield the remainder of my time on this side of the issue if the manager will do likewise.

Mr. SIMPSON. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from Wyoming has 6 minutes; the Senator from Arizona has 32 minutes 14 seconds.

Mr. SIMPSON. I yield the remainder of the time. I appreciate the courtesy of the floor managers with regard to the absence of a motion to table. I am very appreciative.

The PRESIDING OFFICER. All time having been yielded, the question occurs on the amendment. The question is on agreeing to the amendment of the Senator from Wyoming.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from North Dakota [Mr. CONRAD], the Senator from Ohio [Mr. GLENN], the Senator from Iowa [Mr. HARKIN], and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

I further announce that, if present and voting, the Senator from North Dakota [Mr. CONRAD] would vote "no."

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

The result was announced—yeas 24, nays 71, as follows:

[Rollcall Vote No. 259 Leg.]

YEAS—24

Brown	Graham	Nickles
Burns	Gramm	Packwood
Chafee	Hatch	Rudman
Craig	Hatfield	Simpson
Danforth	Helms	Smith
Dole	Jeffords	Symms
Durenberger	Lugar	Thurmond
Garn	Murkowski	Wallop

NAYS—71

Adams	Breaux	Cranston
Akaka	Bryan	D'Amato
Baucus	Bumpers	Daschle
Bentsen	Burdick	DeConcini
Biden	Byrd	Dixon
Bingaman	Coats	Dodd
Bond	Cochran	Domenici
Boren	Cohen	Exon

Ford	Levin	Robb
Fowler	Lieberman	Rockefeller
Gore	Lott	Roth
Gorton	Mack	Sanford
Grassley	McCain	Sarbanes
Heflin	McConnell	Sasser
Hollings	Metzenbaum	Seymour
Inouye	Mikulski	Shelby
Johnston	Mitchell	Simon
Kassebaum	Moynihan	Specter
Kasten	Nunn	Stevens
Kennedy	Pell	Warner
Kerry	Pressler	Wellstone
Kohl	Pryor	Wirth
Lautenberg	Reid	Wofford
Leahy	Riegle	

NOT VOTING—5

Bradley	Glenn	Kerrey
Conrad	Harkin	

So the amendment (No. 1361) was rejected.

Mr. DeCONCINI. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion in the table.

The motion to lay on the table was agreed to.

Mr. DeCONCINI. 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. 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.

The Senate will be in order. Senators will please take their conversations to the Cloakroom.

The Senator from Arizona is recognized.

AMENDMENT NO. 1362

(Purpose: To make a technical correction)

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

The PRESIDING OFFICER. Without objection, the clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arizona [Mr. DeCONCINI] proposes an amendment numbered 1362.

Mr. DeCONCINI. 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 48, line 10, strike out "662" and insert in lieu thereof "1762".

Mr. DeCONCINI. Mr. President, this amendment simply corrects a sectional reference in the bill. It has been cleared by both sides.

Mr. SPECTER. It is agreed to.

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

The amendment (No. 1362) was agreed to.

Mr. DeCONCINI. Mr. President, before we have the vote, I yield to the distinguished Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I rise to add my voice in support of the pending legislation, S. 869, the Veterans Health Care Amendments Act of 1991, which will make major improvements in veterans health services and benefits. Many of the provisions contained in this bill have already been approved by the Senate in previous sessions. I am pleased to say that I am an original cosponsor of this important measure.

Among other provisions, S. 869 would entitle veterans suffering from combat-related posttraumatic stress disorder [PTSD] to inpatient care; allow veterans readjustment counseling centers [vet centers] to provide services to veterans of pre-Vietnam conflicts; expand services for homeless veterans; entitle former prisoners of war to VA outpatient care; authorize adjustments in pay and incentives for certain VA health-care personnel; and, improve access to services by minority veterans.

Mr. President, I am especially pleased by the section in this bill on the vet center program. As you know, vet centers are currently prohibited from outreaching and counseling veterans who served in pre-Vietnam conflicts, in spite of the fact that many of these veterans suffer from many of the same readjustment difficulties experienced by veterans who served in Southeast Asia, Grenada, Panama, or the Persian Gulf.

Over the years, vet centers throughout the country have reported a widespread demand for care from pre-Vietnam-era veterans. Testimony before the Veterans' Affairs Committee shows that as many as 750 to 1,000 pre-Vietnam veterans are being treated at vet centers each month, in spite of the prohibition. That the vet center staff are illegally helping deeply troubled veterans reflects less their willingness to break the law than their deep social and professional commitment to help their fellow human beings. We need to ensure that the letter of the law reflects the spirit of the original vet center legislation. We need to let vet centers carry out their mission unfettered by artificial eligibility distinctions that have little meaning in a clinical context.

Mr. President, an additional reason for approving this provision comes to mind. By expanding the portfolio of our vet centers, we are also helping ensure the program's continued viability. Over the years, we have seen the importance of these community-based facilities in treating and outreaching veterans who otherwise would not have availed themselves of VA services and benefits available in more traditional VA settings. We have seen vet center personnel transformed from people who were viewed with intense skepticism by traditional VA health-care staff to professionals who are now seen as integral members of the VA team. No one, Mr. President, interacts with veterans on their own terms and on their own ground like the outstanding individuals who comprise our vet center system. Their people-oriented, nontraditional approach to problems has given the VA an extra-institutional tool to communicate with the community at large. This is why vet centers are now being used in family counseling and outreaching homeless veterans, to name just two activities.

Other important parts of this bill that deserve special mention are those relating specifically to the treatment of PTSD. One section would set forth a series of findings about PTSD, recognizing the widespread and serious nature of the disorder and VA's responsibility to treat the syndrome. Another provision would mandate that combat-theater veterans with PTSD be provided inpatient care on the same priority of care for veterans with other service-connected disabilities, through an accelerated medical diagnosis and eligibility process. Other sections would require VA to develop a plan to increase PTSD treatment, research, and outreach and require the Secretary to report to Congress on what resources would be needed to carry out the plan. A final provision would require VA to identify specific funding levels for PTSD-related activities in the fiscal 1993 and 1994 budget submissions.

Mr. President, I have taken a special interest in PTSD issues because of the great need for PTSD services in my State, particularly in the rural neighbor islands. In fact, Hawaii may have the highest rates of PTSD incidence and prevalence of any place in the United States. National media reports have identified the big island of Hawaii as a place to which veterans with PTSD from around the country seem to flock, perhaps because its climate and geography closely resemble Vietnam's.

However, most likely because Hawaii still lacks a VA medical center, the full spectrum of PTSD care is not available to Hawaii's indigenous and newcomer veterans population, now more than 100,000 strong. For example, to obtain long-term care at specialized inpatient PTSD units [SIPU's], the most effective type of PTSD care available, Hawaii veterans are forced to travel thousands of miles to the mainland. Another problem my State's veterans face is that PTSD care provided by VA may not be appropriate for veterans from minority backgrounds, such as those from Asian and Pacific ancestry.

To address this situation, I recently proposed the establishment of a Pacific center for PTSD and war-related disorders in Hawaii, a research, education, and treatment center devoted to meeting the needs of Hawaii and Pacific area veterans. The center, which has been funded in this year's appropriations bill, will have a special focus on minority veterans needs, and will have

all Hawaii's VA to integrate all PTSD activities undertaken in the State. It will also oversee the development of the Asian-Pacific component of the so-called Matsunaga Minority PTSD Study, a supplement to the seminal National Vietnam Veterans Readjustment Study, which is being undertaken to evaluate the prevalence and incidence of PTSD in ethnic and racial groups that were excluded in the 1988 study.

But programs such as these are only partial solutions to the PTSD problem. We need a broad-based strategy to address the issue. I believe the provisions contained in S. 869 represent a first step in the right direction.

Finally, Mr. President, I am pleased to note that the pending measure includes provisions originally authored by my predecessor, the late Spark Matsunaga, to improve VA services for minority veterans. Section 301 of the bill would require designation of an Assistant Secretary of Veterans Affairs to be responsible for monitoring and promoting minority veterans' access to VA services and benefits. I understand that a similar measure sponsored by Chairman MONTGOMERY is making its way through the House. Section 302 would reauthorize VA's Advisory Committee on Native American Veterans, a body that has in the past provided important, independent advice directly to the Secretary on issues of concern to American Indians, Native Alaskans, Native Hawaiians, and Pacific Islanders. Taken together, these provisions will help institutionalize concern for the special problems and needs of veterans from minority backgrounds.

Thank you, Mr. President. Before closing however, I would like to recognize Senator CRANSTON, the chairman of the Veterans' Affairs Committee, and his outstanding staff for developing this measure over the last several years. I also commend Senator SPECTER, the ranking minority member, and his staff for working with the majority to bring this important legislation to the Senate floor, so soon and so appropriately after Veterans Day.

I urge my colleagues to support this major veterans health bill.

Before I yield the floor, I wanted to take this opportunity to specifically recognize the leadership that the distinguished floor manager and the ranking minority member have displayed in bringing this legislation to the floor.

I also wanted to recognize the outstanding work of the respective committee staffs. Ed Scott, Bill Brew, Tom Tighe, Michael Cogan, Tom Roberts, Charlie Battaglia, and many more put in many hours and not a little honest sweat into this bill.

But, Mr. President, I reserve my highest praise for Senator CRANSTON, the chairman of the committee, who for so many years has been America's veterans' best friend, bar none.

Just a few minutes ago, I listened with great compassion to Senator CRANSTON's eloquent statement on another subject. It reminded us of the need to look at a whole character, the complete record of debits and credits, the entire picture sketched by a lifetime of achievement.

It is thus eminently fitting that, at this moment, the Senate is debating and preparing to pass a bill that is largely a product of his hand, of his mind, and his will. And this particular legislation is only the latest in a long line of too often unheralded contributions that the Senator from California has made to this Nation.

Mr. President, I commend Senator CRANSTON for two decades of selfless service in behalf of the Nation's veterans. We owe him a debt of gratitude that our country will be hard pressed to repay.

I yield to the floor, Mr. President.

Mr. THURMOND. Mr. President, I rise today to voice my support for S. 869, the Veterans' Post-Traumatic Stress Disorder Treatment Act of 1991. This measure will improve the health care treatment for our deserving veterans.

Mr. President, S. 869 would require that a veteran who is diagnosed as suffering from post-traumatic stress disorder [PTSD] related to combat-area service be provided care for the disorder as though it were service connected. In committee, I expressed my concern over this provision and voted for an amendment to strike this provision, which was not adopted. My concern with this provision is that it sets a precedent for providing treatment based on a particular disorder rather than on service connection.

This measure would require that the Secretary of Veterans Affairs devise and implement a plan to increase the treatment of PTSD, as well as a plan to increase the awareness of the availability of such treatment and appropriately encourage veterans to participate in these treatment programs.

Mr. President, S. 869 would extend for 3 years the reporting requirements of the VA's Special Committee on PTSD. It would require the VA to specify in its fiscal year 1993 and fiscal year 1994 budget documents the type and amount of resources that are proposed to be spent in the coming fiscal year on PTSD-related activities.

This bill also addresses issues other than PTSD. This measure would expand the services for our homeless veterans, by requiring each VA medical center or regional benefits office to make an assessment with respect to the needs of homeless veterans living within that facility's catchment area. After these needs have been identified, each medical center would develop an annual plan for each of fiscal years 1992, 1993, and 1994 for outreach and the provision of comprehensive services to homeless veterans in each medical center's catchment area.

Mr. President, this measure would authorize the VA to provide prosthetic appliances to certain veterans with nonservice-connected disabilities if the provision of such appliances would obviate the need for hospitalization. It would also require the Secretary to establish an advisory committee on the VA's prosthetics programs.

Mr. President, three expiring vocational rehabilitation and training provisions would be extended until December 31, 1992, by this measure. The first extension would be of a temporary program for trial work periods and vocational rehabilitation for certain service-disabled veterans with total disability ratings.

The second extension would be of a temporary program of vocational training for certain new pension recipients.

The third extension would be for the temporary protection of VA health-care eligibility for pension recipients who undergo vocational training. These programs help to ensure that our veterans are equipped to compete in the work force once they leave the Armed Forces.

This bill also includes a provision regarding the accessibility of health care to minority veterans. This measure would require the VA to assess the effects of VA policies and activities regarding minority veterans, including women veterans, and to coordinate and monitor policies facilitating the access of such minority veterans to VA benefits and services. This measure would also reestablish the Advisory Committee on Native American Veterans for an additional 2 years.

In addition to my earlier expressed concern, I am also concerned with a provision that would provide vet center eligibility for combat veterans of all wars or conflicts for psychological problems associated with such service. This provision does not affect Vietnam veterans. In committee, I voted for an amendment to strike this provision, which was not adopted. My concern with this provision is that these times of scarce Federal resources, we must carefully review spending to ensure that our veterans are served in the best manner. It is not because I disagree with meeting a real need of our veterans, but the need to provide readjustment counseling to World War II veterans has not been demonstrated.

Although I have expressed concerns about provisions in the bill, I believe, taken as a whole, S. 869 is a good measure. Accordingly, I will support this comprehensive bill, which improves and extends the availability of health care treatment to our deserving veterans. I urge my colleagues to support this important measure.

Mr. DASCHLE. Mr. President, I rise today in support of the committee bill

S. 869, the Veterans' Health Care Amendments Act of 1991.

Senator DECONCINI has outlined the provisions in this legislation for the Senate already, and I will not belabor that explanation. I would, however, like to take a moment to highlight two innovations contained in this bill that I view as extremely important to our nation's commitment to its veterans. Those are the provisions that give veterans suffering from posttraumatic stress disorder, commonly known as PTSD, the same standing as other veterans who have been physically disabled by the war and that allow veterans of past wars to utilize the counseling services provided at VA vet centers.

S. 869 constitutes a major step forward in opening up VA medical care facilities to the 500,000 Vietnam veterans who are suffering from PTSD and have not received the care they deserve from the VA system. The bill directly addresses the harsh reality that many veterans are suffering from this disease even today—16 years after the last American forces left Vietnam. It affirms, finally, that the psychological health of those veterans can no longer be ignored by their Government.

Section 102 of the committee bill requires the VA to treat veterans suffering from PTSD with the same sense of urgency as the veteran who was physically wounded or disabled in service. It asks the Department of Veterans Affairs to treat those veterans with this service-related illness without waiting for the laborious and time-consuming adjudication process to authorize that care.

S. 869 is not perfect. Clearly, it is only one step in the long journey to heal the psychological wounds of the Vietnam war. But, for now, it is the only viable means of ending the VA's reliance on an eligibility process that undermines rather than promotes constructive evaluation of the psychological needs of veterans and obstructs rather than facilitates their care in VA mental health facilities.

Mr. President, PTSD is a very serious problem for combat veterans. It has been ignored by the VA and minimized by the opponents of this legislation.

The need for action is painfully clear. In December 1988, the Research Triangle Institute released a comprehensive report on the pervasiveness of PTSD among combat veterans. The RTI study found that 500,000 veterans are suffering from what is termed "full-blown" PTSD, and that another 350,000 are suffering from less intense trauma-related symptoms as a result of their military service. That study found that only 61 percent of the Vietnam theater veterans with PTSD had made even one visit to a mental health professional. And only 10 percent of those veterans with PTSD had used VA mental health services at the start of 1989.

What is the explanation for these shocking statistics? It is that the process for gaining eligibility for care is so cumbersome that there is little incentive to seek that care. To gain eligibility, veterans must weave their way through the VBA adjudication process, which can take as much as 450 days. Then, if their application is rejected, they must petition the Board of Veterans Appeals, which takes on average another 155 days.

If a veteran survives that process and is granted service-connection for PTSD, the VA emphasizes compensation over treatment. In effect, the veteran is paid to be ill, rather than helped to get better—a strategy I don't believe anyone intended.

Mr. President, many veterans seeking care for stress-related disorders are in a crisis situation or in very poor health from their emotional disturbances. This disease often affects their ability to function properly in their jobs and puts tremendous strain on their marriages. For many, the symptoms only appeared years after their return from the war, triggered by events such as watching the Persian Gulf war on television or living through the California earthquake. Meanwhile, if these veterans have not completed the proper VA paperwork and persevered through the bureaucratic maze that must precede treatment, they are basically out of luck.

S. 869 acknowledges the injustice of the dilemma facing veterans suffering from PTSD. Section 103 of the committee bill expedites the application process by requiring the VA to conduct evaluations of veterans referred by vet centers to medical centers within 7 days of the date of the referral. It also asks the VA to treat these veterans as it would any other veteran wounded in war if their combat status has been verified and a VA mental health professional diagnoses this disease.

The only alternative to this provision is the status quo. Is that what the opponents of S. 869 truly want? Surely not.

I have heard it said here today and during committee meetings on this bill would create a bad precedent; that legislating eligibility based on particular illness is bad policy; that ignoring the adjudication process will compromise the VA system. These arguments are easily refuted and miss the point.

There are numerous cases where benefits have been legislated based on particular diseases. But that is not the issue at all.

The issue is simply whether or not veterans with PTSD deserve care from their Government. The VA health care system is not responding to veterans who suffer from this debilitating illness. It needs fixing. This legislation accomplishes that goal, and I urge my colleagues to support the PTSD provisions in S. 869.

A second innovation I would like to mention briefly is the vet center expansion included in S. 869. Frankly, I cannot understand the rationale behind the opposition to this provision.

The committee bill would allow veterans of past wars to utilize the counseling services provided at VA vet centers. It would remove the artificial limitation that denies access to any veteran who served in combat before Vietnam and allow those veterans to seek the counseling that has made vet centers so successful.

While it is true that vet centers originally had been created for Vietnam-era veterans who felt alienated from the VA system, the fact is that vet centers have become an important component of the VA mental health services delivery system by referring patients to a VA medical center for inpatient treatment or by counseling veterans who are not eligible for care at the VA. Veterans who are denied these services are cut off from an essential part of the VA's mental health system.

Once again, statistics demonstrate the need for this legislation. Committee hearings on S. 869 revealed that approximately 600 new Korean and World War II veterans seek care at vet centers each month.

Expansion of vet center services to World War II and Korean veterans will not harm Vietnam veterans or overburden the VA system. It will simply allow vet centers to provide needed services to deserving veterans without being distracted by complex eligibility requirements or being forced to turn away veterans in need of counseling.

I cannot understand why anyone would want to deny access to thousands of wartime veterans seeking help at the vet centers. I hope my colleagues will agree.

Finally, I would like to comment on the attempt this morning to add a COLA indexing amendment to S. 869. Plain and simple, this amendment is nothing less than a clever tactic that opponents of this legislation are using to slow down this legislation.

Veterans' groups do not want indexing, and the amendment was rejected in committee. If the amendment's authors are concerned about the COLA, why was it not offered to the COLA legislation that passed last month?

Every time this issue is raised, we are forced to point out that the annual COLA legislation gives us the opportunity to examine the compensation system and exercise important oversight that otherwise would not take place. Each year, the committee holds a COLA hearing at which it receives valuable input on the VA compensation system. Each year we have that opportunity to hold VA's feet to the fire on their treatment of compensation beneficiaries.

Without this vehicle, that opportunity could be overtaken by other

events and legislation. For example, VA pension recipients receive an annual COLA every year. I cannot remember, however, the last time the Veterans' Affairs Committee held a pension hearing.

I ask my colleagues to consider what effect this amendment would have on future administration of the system before voting on it. I would urge them to talk with veterans groups and with individual veterans in their States who understand the importance of this legislation and, ultimately, vote against the Simpson indexing amendment.

I yield the floor.

Mr. MACK. Mr. President, I rise in strong support of S. 869, the Veterans Health Care Amendments Act of 1991, and as a cosponsor of S. 775, the Veterans Benefits Improvements Act of 1991. The veterans of Florida will benefit significantly by the provisions of these two important legislative initiatives.

S. 869 will provide a wide array of essential services to veterans suffering from post-traumatic stress disorder [PTSD]. This will include fast-track eligibility for the treatment of those who have yet to reach the top of the long backlog list of persons awaiting adjudication. PTSD is a highly debilitating psychological disorder resulting, in part, from combat exposure. The result of PTSD, in many cases, is a severe disruption in the behavior of the patient causing an inability to work, communicate with others, or to maintain a normal lifestyle.

It is important to note that Florida has a high Hispanic population, which is a high-risk group for PTSD. However, through a variety of psychological counseling techniques, we are now able to successfully treat most cases of PTSD. Clearly, we have a responsibility to treat our veterans who suffer from this horrible disorder. It would be cruel to force them to wait until the Department of Veterans' Affairs has completed its adjudication process before treatment is provided. S. 869 will remedy this situation and expand the services for treatment provided to PTSD patients.

I am extremely pleased this bill will also expand and extend the pilot program of VA preventive health care services through 1996, which includes cancer screening. I have addressed the Senate on numerous occasions regarding my legislation, the Cancer Screening Incentive Act. I am a cancer survivor who is alive today because of early detection and prompt treatment. The VA preventive care pilot program currently provides early detection procedures for breast, cervical, and colon cancer.

The American Cancer Society estimates that 79,500 lives could be saved each year through early cancer detection. It is my sincere hope that the Secretary and the Chief Medical Director will take the initiative to include other forms of cancer screening in the preventive health care pilot program.

S. 869 also incorporates the provisions of S. 327, legislation which I cosponsored earlier this year. The section would entitle all former POW's to outpatient care regardless of the veteran's service-connected disability rating. This is a long overdue service, and I commend the committee for including this provision in S. 869.

Earlier this month, I urged my colleagues to take quick action on this bill. I wanted to ensure that the Department of Veterans Affairs would have adequate time in which to input the data prior to printing January benefit checks. The Senate instead passed H.R. 1046, which provided a 3.7-percent COLA effective December 1, 1991.

Mr. President, the Senator from Wyoming has offered an amendment to provide for the indexing of future COLA's. I deeply regret that I cannot in good conscience support my friend, Senator SIMPSON, on his amendment. I wholeheartedly support the underlying intent of the amendment—veterans deserve an annual cost-of-living adjustment. Veterans should not be subjected to the annual fear and panic each November that Congress is not going to provide them with their modest COLA. I agree with the Senator from Wyoming on these points.

I believe Senator SIMPSON'S amendment is a result of the outpouring of concern, disbelief, and rage our veterans expressed as a result of events which transpired last year. The 1991 COLA for veterans and DIC beneficiaries was not provided on time due to the insistence on the part of other Senators to tie a COLA to agent orange exposure. As a result, the Senate passed a retroactive COLA. Most did not receive the benefit checks until April. If this were an annual occurrence, I would not only support the Senator from Wyoming's amendment, I would cosponsor it. But, Mr. President, this is not the case.

The Disabled American Veterans, the American Legion, the Paralyzed Veterans Association, AMVETS, and many other veteran organizations adamantly oppose the indexing of veterans COLA's. These organizations are concerned that many of the services contained in these two bills would never receive full Senate consideration as stand-alone bills. I believe we should listen to the members of these organizations and reject this amendment.

This bill contains a number of other significant services including the expansion of mobile health clinics, eligibility for prosthetic devices and other medical equipment, assistive dogs for certain disabled veterans, and pay enhancements for certain health care personnel.

I also rise as a cosponsor of S. 775, the Veterans Benefits Improvements Act of 1991. Of primary concern to me is the provision which adds two new forms of cancer—cancer of the salivary gland, and cancer of the urinary tract—to the list of those diseases presumed associated with radiation exposure. Further, it will require the Secretary to conduct a study of three activities per year, for a period of 4 years, in which veterans could have been exposed to potentially harmful ionizing radiation.

Mr. President, these two bills will greatly assist in meeting the health care needs of America's veterans. I sincerely believe our Nation entered into a contract with the brave men and women who have proudly served our Nation in times of conflict. I view the passage of these bills as living up to our part of the contract. I consider it a privilege to vote for the passage of these two important bills.

Mr. ADAMS. Mr. President, I rise today to speak in support of S. 869, the Veterans Health Care Amendments Act of 1991 and S. 775, the Veterans Compensation Improvement Act of 1991. When young men and women risk their lives in defense of their country and return home with special health care needs, they should have confidence that they will be well-served. We need a Veterans Administration health care and benefits system that can effectively meet those needs.

S. 775, the Veterans Compensation Improvement Act of 1991, increases disability and dependency and indemnity compensation [DIC] rates. This bill is an important step towards ensuring that these benefits keep pace with the cost of living for those servicemen and women who were wounded in combat, or their survivors. These committed individuals made the ultimate sacrifice for their country, and their service should never be forgotten. In addition to increased benefits for disabled veterans, S. 775 expands the coverage for those veterans who developed diseases as a result of radiation exposure during training or combat. This extension of coverage for radiation-exposed veterans is well-earned, long overdue, and deserves our support.

As a veteran myself, I know of the sacrifices made by our servicemen and women, especially our combat veterans. Over 800,000 Vietnam veterans are currently suffering from post-traumatic stress disorder [PTSD] or related symptoms. S. 869, the Veterans Health Care Amendments Act of 1991, makes dramatic progress in the treatment and care for those suffering from PTSD and other conditions. Whether our veterans need assistance with prosthetics, assistive animals, or counseling and treatment for PTSD, we must support a veterans medical system that will provide the counseling, training, or treatment that is so vital to their lives. These veterans deserve our commitment to their well-being. They deserve our respect for their efforts on

our behalf. This important piece of legislation is a tangible demonstration of that commitment and respect.

Unfortunately, in addition to those suffering from PTSD, many veterans in our country are homeless. Many of these veterans, who defended our country, now don't even have a warm place to sleep at night. This situation is unconscionable and it is intolerable. I am proud to support this measure, which also recognizes the special needs of our homeless veterans population and seeks to remedy their plight.

I have always been committed to serving our country's veterans by providing the highest quality health care possible. This bill improves our veterans' health care facilities, and increases funding for mental illness research, education, and clinical activities, and home health care. These expanded programs will move us ever closer to that goal.

Mr. President, we owe a tremendous debt to our Nation's veterans, past, present, and future. I do not take this debt lightly. The Veterans Health Care Amendments Act of 1991 makes the much needed improvements that are so vital to maintain the quality of our veterans' health care system and I urge my colleagues to support this important measure. Our Nation's veterans must be certain of our unwaivering support. The veterans in my State of Washington deserve no less.

Mr. AKAKA. Mr. President, I rise to add my voice in support of the pending legislation, S. 869, the Veterans Health Care Amendments Act of 1991, which will make major improvements in veterans' health services and benefits. Many of the provisions contained in this bill have already been approved by the Senate in previous sessions. I am pleased to say that I am an original cosponsor of this important measure.

Among other provisions, S. 869 would: Entitle veterans suffering from combat-related post-traumatic stress disorder [PTSD] to inpatient care; allow veterans readjustment counseling centers—vet centers—to provide services to veterans of pre-Vietnam conflicts; expand services for homeless veterans; entitle former prisoners of war to VA outpatient care; authorize adjustments in pay and incentives for certain VA health care personnel; and, improve access to services by minority veterans.

Mr. President, I am especially pleased by the section in this bill on the vet center program. As you know, vet centers are currently prohibited from outreaching and counseling veterans who served in pre-Vietnam conflicts, in spite of the fact that many of these veterans suffer from many of the same readjustment difficulties experienced by veterans who served in Southeast Asia, Grenada, Panama, or the Persian Gulf.

Over the years, vet centers throughout the country have reported a widespread demand for care from pre-Vietnam era veterans. Testimony before the Veterans' Affairs Committee shows that as many as 750 to 1,000 pre-Vietnam veterans are being treated at vet centers each month, in spite of the prohibition. That the vet center staff are illegally helping deeply troubled veterans reflects less their willingness to break the law than their deep social and professional commitment to help their fellow human beings. We need to ensure that the letter of the law reflects the spirit of the original vet center legislation. We need to let vet centers carry out their mission unfettered by artificial eligibility distinctions that have little meaning in a clinical context.

Mr. President, an additional reason for approving this provision comes to mind. By expanding the portfolio of our vet centers, we are also helping ensure the program's continued viability. Over the years, we have seen the importance of these community-based facilities in treating and outreaching veterans who otherwise would not have availed themselves of VA services and benefits available in more traditional VA settings. We have seen vet center personnel transformed from people who were viewed with intense skepticism by traditional VA health care staff to professionals who are now seen as integral members of the VA team. No one, Mr. President, interacts with veterans on their own terms and on their own ground like the outstanding individuals who comprise our vet center system. Their people-oriented, nontraditional approach to problems has given the VA and extrainstitutional tool to communicate with the community at large. This is why vet centers are now being sued in family counseling and outreaching homeless veterans, to name just two activities.

Other important parts of this bill that deserve special mention are those relating specifically to the treatment of PTSD. One section would set forth a series of findings about PTSD, recognizing the widespread and serious nature of the disorder and VA's responsibility to treat the syndrome. Another provision would mandate that combat-theater veterans with PTSD be provided inpatient care on the same priority of care for veterans with other service-connected disabilities, through an accelerated medical diagnosis and eligibility process. Others sections would require VA to develop a plan to increase PTSD treatment, research, and outreach and require the Secretary to report to Congress on what resources would be needed to carry out the plan. A final provision would require VA to identify specific funding levels for PTSD-related activities in the fiscal 1993 and 1994 budget submissions.

Mr. President, I have taken a special interest in PTSD issues because of the great need for PTSD services in my State, particularly in the rural neighbor islands. In fact, Hawaii may have the highest rates of PTSD incidence and prevalence of any place in the United States. National media reports have identified the big island of Hawaii as a place to which veterans with PTSD from around the country seem to flock, perhaps because its climate and geography closely resemble Vietnam's.

However, most likely because Hawaii still lacks a VA medical center, the full spectrum of PTSD care is not available to Hawaii's indigenous and newcomer veterans population, now more than 100,000 strong. For example, to obtain long-term care at specialized inpatient PTSD units [SIPU's], the most effective type of PTSD care available, Hawaii veterans are forced to travel thousands of miles to the mainland. Another problem my State's veterans face is that PTSD care provided by VA may not be appropriate for veterans from minority backgrounds, such as those from Asian and Pacific ancestry.

To address this situation, I recently proposed the establishment of a Pacific Center for PTSD and War-Related Disorders in Hawaii, a research, education, and treatment center devoted to meeting the needs of Hawaii and Pacific area veterans. The Center, which has been funded in this year's appropriations bill, will have a special focus on minority veterans needs, and will work with Hawaii's VA to integrate all PTSD activities undertaken in the State. It will also oversee the development of the Asian-Pacific component of the so-called Matsunaga Minority PTSD Study, a supplement to the seminal National Vietnam Veterans Readjustment Study, which is being undertaken to evaluate the prevalence and incidence of PTSD in ethnic and racial groups that were excluded in the 1988 study.

But programs such as these are only partial solutions to the PTSD problem. We need a broad-based strategy to address the issue. I believe the provisions contained in S. 869 represent a first step in the right direction.

Finally, Mr. President, I am pleased to note that the pending measure includes provisions originally authored by my predecessor, the late Spark Matsunaga, to improve VA services for minority veterans. Section 301 of the bill would require designation of an Assistant Secretary of Veterans Affairs to be responsible for monitoring and promoting minority veterans' access to VA services and benefits. I understand that a similar measure sponsored by Chairman Montgomery is making its way through the House. Section 302 would reauthorize VA's Advisory Committee on Native American veterans, a body that has in the past provided important, independent advice directly to the Secretary on issues of concern to American Indians, Native Alaskans,

Native Hawaiians, and Pacific Islanders. Taken together, these provisions will help institutionalize concern for the special problems and needs of veterans from minority backgrounds.

Thank you, Mr. President. Before closing, however, I would like to recognize Senator CRANSTON, the chairman of the Veterans' Affairs Committee, and his outstanding staff for developing this measure over the last several years. I also commend Senator SPECTER, the ranking minority member, and his staff for working with the majority to bring this important legislation to the Senate floor, so soon and so appropriately after Veterans Day.

Thank you, Mr. President. I urge my colleagues to support this major veterans health bill.

Mr. DECONCINI. Mr. President, we have no further amendments that I know of, and I am prepared to have a third reading of the bill.

The PRESIDING OFFICER. Without objection, the committee substitute amendment is agreed to.

The clerk will read the bill for the third time.

The bill was ordered to be engrossed for a third reading and was read a third time.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. DECONCINI. Mr. President, I think we are prepared for final passage.

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the House companion, bill, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2280) to amend title 38, United States Code, to extend and improve veterans health care programs.

The PRESIDING OFFICER. Under the previous order, the text of S. 869, as amended, is substituted for H.R. 2280, and the bill is deemed read third time.

The PRESIDING OFFICER. The bill deemed to have been read the third time, the question is, Shall the bill pass?

The bill (H.R. 2280) was passed; as follows:

Resolved, That the bill from the House of Representatives (H.R. 2280) entitled "An Act to amend title 38, United States Code, to extend and improve veterans' health care programs" do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the "Veterans Health Care Amendments Act of 1991".

(b) REFERENCES TO TITLE 38.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—MENTAL HEALTH

PART A—POST-TRAUMATIC STRESS DISORDER

SEC. 101. SHORT TITLE.

This part may be cited as the "Veterans Post-Traumatic Stress Disorder Treatment Act of 1991".

SEC. 102. FINDINGS.

The Congress finds the following:

(1) Post-traumatic stress disorder (PTSD) is a highly disruptive and debilitating psychological disorder that can result from exposure to combat or any other traumatic event outside the range of conventional human experience.

(2) Post-traumatic stress disorder can have a destructive impact on the life of a person suffering from the disorder by adversely affecting his or her behavior, ability to work with, relate to, and communicate with others, and ability to maintain gainful employment.

(3) In 1980, the American Psychiatric Association officially recognized PTSD as a diagnosis in its "Diagnostic and Statistical Manual of Mental Disorders (Third edition)" and identified combat experience as a potential cause for PTSD.

(4) A Congressionally-mandated study of Vietnam-era veterans, released in November 1988, regarding the frequency of symptoms of PTSD and other problems relating to readjustment from combat of such veterans, found that 479,000 male veterans of the Vietnam theater of operations (representing 15.2 percent of all such male veterans) suffered from the full effects of PTSD and that another 350,000 of such veterans (representing 11.2 percent of all such male veterans) experienced some symptoms of the PTSD.

(5) That study also found higher incidences of PTSD among Black and Hispanic male veterans of the Vietnam theater of operations than among all male veterans of that theater, but did not include data on the incidence of the disorder among veterans of other ethnic groups.

(6) A large body of evidence indicates that such psychological disorders related to combat stress as war neurosis, combat fatigue, and the disorder commonly known as "shell shock" are analogous to PTSD and that thousands of veterans of combat in World War II and the Korean war experienced and continue to experience symptoms of such disorders.

(7) That evidence also indicates that veterans of combat in military operations conducted after the Vietnam era, including operations in Lebanon, Granada, and Panama, also suffer from symptoms of PTSD.

(8) Although debilitating, PTSD can be treated successfully, and an individual experiencing the disorder can learn coping skills, including how to mitigate the effects of the anxiety, depression, anger, guilt, fear, alienation, and emotional outbursts that he or she experiences.

(9) Early intervention and treatment of acute PTSD can be an important part of a therapeutic course to prevent long-term chronic PTSD.

(10) The Department of Veterans Affairs has a responsibility to provide opportunities for treatment of PTSD and other stress-related psychological problems to the hundreds of thousands of combat veterans who suffer from PTSD and to conduct outreach activities that provide both actual notice of the availability of such treatment to those veterans and appropriate encouragement for such veterans to participate in the treatment.

(11) The Department has made some progress in expanding diagnosis and treatment programs relating to PTSD.

(12) Through readjustment counseling, specialized inpatient and outpatient programs, and general psychiatric services offered in its hospitals and outpatient clinics, the Department has provided needed treatment to thousands of veterans for PTSD.

(13) Despite such progress the Department can and should be doing much more to provide treatment to veterans for PTSD and other stress-related psychological problems and to provide outreach services to make veterans aware of, and encourage them to participate in, treatment opportunities available through the Department.

(14) It is in the public interest for the Secretary of Veterans Affairs to develop a plan that ensures immediate, on-demand treatment opportunities for the thousands of veterans who suffer from, and need treatment for, this disruptive, life-threatening disorder.

SEC. 103. CARE FOR COMBAT-THEATER VETERANS WITH SERVICE-RELATED POST-TRAUMATIC STRESS DISORDER.

(a) REQUIREMENT TO FURNISH CARE AND SERVICES.—(1) Section 1702 is amended—

(A) by inserting "(a)" before "For"; and

(B) by adding at the end the following new subsections:

"(b)(1) A veteran referred to in paragraph (2)(A) who is diagnosed by a mental health professional designated by the Chief Medical Director (following an examination of the veteran by such professional) to be suffering from post-traumatic stress disorder related to service referred to in such paragraph shall be furnished care and services for such disorder pursuant to sections 1710(a)(1)(A) and 1712(a)(1)(A) of this title even though such disorder has not been determined to be service connected.

"(2)(A) A veteran eligible for the care and services referred to in paragraph (1) is a veteran who, as determined by the Chief Benefits Director, served on active duty in a theater of combat operations (as defined by the Secretary) during World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, or in any other area during a period in which hostilities occurred in such area.

"(B) In the case of a veteran who is diagnosed as suffering from post-traumatic stress disorder, the determination of whether the veteran served on active duty as described in subparagraph (A) shall be made by the most expeditious means practicable.

"(c) For the purposes of subsection (b) of this section, the term 'hostilities' means an armed conflict in which members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.".

(2)(A) The heading of such section is amended to read as follows:

"§1702. Special provisions relating to mental illness disabilities".

(B) The item relating to such section in the table of sections at the beginning of chapter 17 is amended to read as follows:

"1702. Special provisions relating to mental illness disabilities.".

(b) TIMELINESS OF EVALUATION AND VERIFICATION OF STATUS.—Section 1712A is amended—

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection (i):

"(i) Whenever a veteran is referred by a center to a Department general health-care facility for a determination regarding such veteran's eligibility for care and services under section 1702(b) of this title, the veteran shall be evaluated for diagnostic purposes within seven days after the date on which the referral is made.".

SEC. 104. ELIGIBILITY FOR SERVICES AT VET CENTERS.

Subsection (a) of section 1712A is amended by adding at the end the following new paragraph:

"(3) Upon the request of any veteran who served on active duty in a theater of combat operations (as defined by the Secretary) during World War II or the Korean conflict, the Sec-

retary shall furnish counseling to such veteran in order to assist the veteran to overcome any psychological problems associated with such service. The counseling shall include a general mental and psychological assessment to ascertain whether the veteran has mental or psychological problems associated with such service.".

SEC. 105. IMPROVEMENT OF POST-TRAUMATIC STRESS DISORDER TREATMENT AND OUTREACH SERVICES OF THE DEPARTMENT OF VETERANS AFFAIRS.

(a) PLAN FOR TREATMENT AND OUTREACH SERVICES IMPROVEMENT.—Not later than December 1, 1991, the Secretary of Veterans Affairs shall devise and initiate implementation of a plan—

(1) to increase the availability of treatment of veterans suffering from post-traumatic stress disorder by the Department of Veterans Affairs (including treatment provided in inpatient and outpatient programs providing specialized treatment for PTSD, treatment for PTSD in conjunction with substance abuse, and treatment in Vet Centers) to levels commensurate with the needs of veterans suffering from the disorder as a result of active duty; and

(2) to enhance outreach activities—

(A) to inform combat veterans (including veterans who are members of ethnic minority groups), the family members of such veterans, and appropriate State and local health organizations and social service organizations of the availability of such treatment; and

(B) to provide appropriate encouragement for such veterans to participate in such treatment.

(b) SPECIAL CONSIDERATIONS.—In devising the plan, the Secretary shall consider—

(1) the level and geographic accessibility of inpatient and outpatient care for veterans suffering from PTSD across the United States;

(2) the desirability of providing for inpatient PTSD care to be furnished to such veterans in facilities of the Department that are physically independent of general psychiatric wards of the medical facilities of the Department; and

(3) the treatment needs of such veterans who are women, of such veterans who are members of ethnic minorities (including Native Americans, Native Hawaiians, Asian-Pacific Islanders, and Native Alaskans), and of such veterans who suffer from substance abuse problems as well as PTSD.

(c) IMPLEMENTATION.—In carrying out the plan, the Secretary shall—

(1) prescribe a schedule for the implementation of the plan;

(2) prescribe appropriate criteria for the selection and training of staff necessary to increase the availability of the treatment and enhance the outreach activities referred to in subsection (a); and

(3) provide the facilities, personnel, funds, and other resources necessary to carry out the plan.

(d) DEFINITIONS.—For the purposes of this section:

(1) The term "Vet Center" shall have the meaning given the term "center" in section 1712A(j)(1) of title 38, United States Code (as redesignated by section 103(b)(1) of this Act).

(2) The term "active duty" shall have the meaning given such term in section 101(21) of such title.

(3) The term "veteran" shall have the meaning given such term in section 101(2) of such title.

SEC. 106. REPORT BY THE SECRETARY OF VETERANS AFFAIRS.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act and subject to subsection (b), the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the plan required by section 105. The report shall contain the following information:

(1) A description of the plan.

(2) What facilities, personnel, funds, and other resources are necessary to increase the availability of treatment and enhance outreach activities in accordance with the plan in a manner that does not reduce the existing capacity of the Department of Veterans Affairs to provide treatment for other conditions.

(3) A description of the efforts undertaken by the Secretary to make such resources available for the treatment of veterans for post-traumatic stress disorder.

(4) An estimate of the availability of community-based residential treatment of veterans for post-traumatic stress disorder and the impact of such availability on the increased availability of such treatment by the Department.

(5) An assessment of the need for, and potential benefit of, making available scholarships, tuition reimbursement, or other educational assistance to health-care students and health-care professionals in order to improve the training and specialization of such individuals in the provision of such treatment.

(6) A description of the efforts of the Secretary to implement the recommendations of the Special Committee on Post-Traumatic Stress Disorder referred to in subsection (b) with respect to—

(A) establishing educational programming that is directed to each of the various levels of education, training, and experience of the various mental health professionals involved in the treatment of veterans suffering from PTSD; and

(B) giving research relating to PTSD a high priority in the allocation of funds available to the Department in research activities relating to mental health.

(7) Such other proposals and recommendations as the Secretary considers appropriate to increase the availability of such treatment.

(b) REPORT ASSISTANCE.—In preparing the report referred to in subsection (a), the Secretary shall consult with the Special Committee on Post-Traumatic Stress Disorder established pursuant to section 110(b) of the Veterans' Health Care Act of 1984 (38 U.S.C. 1712A note) and the Secretary's Advisory Committee on Readjustment of Vietnam Veterans.

SEC. 107. TECHNICAL AMENDMENTS.

Section 1712A is amended—

(1) in subsection (a)(1), by striking out "Administrator" and "Veterans' Administration" each place it appears and inserting in lieu thereof "Secretary" and "Department", respectively;

(2) in subsection (h)—

(A) by striking out "Administrator" and "Veterans' Administration" each place it appears and inserting in lieu thereof "Secretary" and "Department", respectively; and

(B) in paragraph (5), by striking out "the Secretary considers" and inserting in lieu thereof "such Secretary considers"; and

(3) in subsection (j) (as redesignated by section 103(b)(1)), by striking out "Veterans' Administration" each place it appears and inserting in lieu thereof "Department".

SEC. 108. SPECIAL COMMITTEE ON POST-TRAUMATIC STRESS DISORDER.

(a) EVALUATION OF STUDY OF POSTWAR PSYCHOLOGICAL PROBLEMS OF VIETNAM VETERANS.—(1) Not later than February 15, 1992, the Special Committee on Post-Traumatic Stress Disorder (hereinafter in this section referred to as the "Special Committee") established pursuant to section 110(b)(1) of the Veterans' Health Care Act of 1984 (38 U.S.C. 1712A note) shall submit concurrently to the Secretary of Veterans Affairs and the Committees on Veterans' Affairs of the Senate and House of Representatives (hereinafter in this section referred to as the "Committees") a report setting forth the Special Committee's evaluation of the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (38 U.S.C. 1712A note). Such report shall include the Special Committee's—

(A) overall evaluation of the conduct, validity, and meaning of the study;

(B) assessment of the capability of the Department of Veterans Affairs to meet the need for diagnosing and treating veterans for post-traumatic stress disorder and for other psychological problems in readjusting to civilian life, as estimated in the results of such study;

(C) evaluation of the Secretary's report on the study; and

(D) recommendations for any further or follow-up research on the matters addressed in the study.

(2) Not later than 30 days after receiving the Special Committee's report under paragraph (1), the Secretary shall submit to the Committees any comments concerning the report that the Secretary considers appropriate.

(b) UPDATES OF REPORTS UNDER SECTION 110(c) OF PUBLIC LAW 98-528.—(1) Not later than February 1 of each of 1992 and 1993, the Special Committee shall concurrently submit to the Secretary and the Committees a report containing information updating the reports submitted to the Secretary under section 110(e) of the Veterans' Health Care Act of 1984, together with any additional information the Special Committee considers appropriate regarding the overall efforts of the Department of Veterans Affairs to meet the needs of veterans with post-traumatic stress disorder and other psychological problems in readjusting to civilian life.

(2) Not later than 60 days after receiving each of the Special Committee's reports under paragraph (1), the Secretary shall submit to the Committees any comments concerning the report that the Secretary considers appropriate.

SEC. 109. FUNDING FOR POST-TRAUMATIC STRESS DISORDER PROGRAMS.

In the documents providing detailed information on the budget for the Department of Veterans Affairs that the Secretary of Veterans Affairs submits to the Congress in conjunction with the President's budget submission for fiscal year 1993 and for fiscal year 1994 pursuant to section 1105 of title 31, United States Code, the Secretary shall identify the amounts in the appropriations requests for Department accounts that are estimated to be obligated for—

(1) the payment of compensation to veterans for disabilities resulting from post-traumatic stress disorder (hereinafter in this section referred to as "PTSD") that is service connected;

(2) the treatment of veterans by or at the expense of the Department for PTSD related to their active-duty service, including specific designation of funds for the treatment of PTSD—

(A) in PTSD programs designated pursuant to section 110(a)(1) of the Veterans' Health Care Act of 1984 (38 U.S.C. 1712A note);

(B) in inpatient psychiatric programs and outpatient mental health programs other than such designated PTSD programs;

(C) in readjustment counseling programs pursuant to 1712A of title 38, United States Code; and

(D) under contract through non-Department sources furnishing (i) readjustment counseling services pursuant to section 1712A(e) of such title, (ii) mental health services pursuant to such section 1712A(e), or (iii) mental health services pursuant to other authority, and described in the first annual report submitted pursuant to section 110(e)(1) of the Veterans' Health Care Act of 1984 as having been proposed by the Special Committee on Post-Traumatic Stress Disorder;

(3) education, training, and research at—

(A) the National Center on Post-Traumatic Stress Disorder established under section 110(c) of such Act;

(B) any centers of mental illness research, education, and clinical activities that may be established at Department medical centers; and

(C) other Department research facilities; and

(4) the operation of the National Center on Post-Traumatic Stress Disorder.

SEC. 110. SELECTION OF LOCATIONS FOR NEW POST-TRAUMATIC STRESS DISORDER TREATMENT UNITS.

(a) ACCESSIBILITY OF PTSD TREATMENT UNITS TO VETERANS IN RURAL AREAS.—(1) Subchapter I of chapter 81 is amended by adding at the end the following new section:

"§ 8117. Locations of PTSD treatment units

"The Secretary shall to the extent practicable ensure that there are Department post-traumatic stress disorder treatment units in locations that are readily accessible to veterans residing in rural areas of the United States.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 8116 the following new item:

"8117. Locations of PTSD treatment units.".

(b) IMPLEMENTATION.—In determining where to locate post-traumatic stress disorder units which may be established after the date of the enactment of this Act, the Secretary of Veterans Affairs shall give strong consideration to locations referred to in section 8117 of title 38, United States Code, as added by subsection (a)(1).

PART B—MENTAL ILLNESS RESEARCH AND EDUCATION

SEC. 121. MENTAL ILLNESS RESEARCH, EDUCATION, AND CLINICAL CENTERS.

(a) IN GENERAL.—Subchapter II of chapter 73 is amended—

(1) by redesignating sections 7316 and 7317 as sections 7317 and 7318, respectively; and

(2) by inserting after section 7315 the following new section 7316:

"§ 7316. Mental illness research, education, and clinical centers

"(a) The purposes of this section are to facilitate the improvement of health-care services for eligible veterans suffering from mental illness, especially service-related conditions, through research, the education and training of health personnel, and the development of improved models for the furnishing of clinical services.

"(b)(1) In order to carry out the purposes of this section, the Secretary, upon the recommendation of the Chief Medical Director and pursuant to the provisions of this subsection, shall designate not more than five health-care facilities of the Department as the locations for centers of mental illness research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this section.

"(2) The Secretary shall designate at least one facility under paragraph (1) not later than January 1, 1992.

"(3) In designating facilities as the locations for centers under paragraph (1), the Secretary, upon the recommendation of the Chief Medical Director, shall ensure appropriate geographic distribution of such facilities.

"(4) The Secretary may not designate any health-care facility as a location for a center under paragraph (1) unless the Secretary, upon the recommendation of the Chief Medical Director, determines that the facility has (or may reasonably be anticipated to develop)—

"(A) with an accredited medical school which provides education and training in psychiatry and with which such facility is affiliated, an arrangement under which residents receive education and training in psychiatry through regular rotation through such facility so as to provide such residents with training in the diagnosis and treatment of mental illness;

"(B) with an accredited graduate school of psychology which provides education and training in clinical or counseling psychology or both and with which the facility is affiliated, an arrangement under which students receive education and training in clinical or counseling psychology or both through regular rotation through such facility so as to provide such students with training in the diagnosis and treatment of mental illness;

"(C) an arrangement under which nursing, social work, or other allied health personnel receive training and education in mental health care through regular rotation through such facility;

"(D) the ability to attract the participation of scientists who are capable of ingenuity and creativity in research into the causes, treatment, and prevention of mental illness and into models for furnishing care and treatment to veterans suffering from mental illness;

"(E) a policymaking advisory committee composed of appropriate mental health-care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center; and

"(F) the capability to conduct effectively evaluations of the activities of such center.

"(c) Activities of clinical and scientific investigation at each center shall be eligible to compete for the award of funding from amounts appropriated for the Department of Veterans Affairs medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for mental illness.

"(d) There are authorized to be appropriated for the basic support of the research and education and training activities of the centers established pursuant to subsection (b)(1), $3,125,000 for fiscal year 1992 and $6,250,000 for each of the three subsequent fiscal years. The Chief Medical Director shall allocate to such centers from other funds appropriated generally for the Department of Veterans Affairs medical care account and medical and prosthetics research account such amounts as the Chief Medical Director determines appropriate.

"(e) The Chief Medical Director shall ensure that research activities carried out through centers established under subsection (b)(1) include an appropriate emphasis on the psychosocial dimension of mental illness and on proposals of means of furnishing care and treatment to veterans suffering from mental illness.

"(f) The Chief Medical Director shall ensure that useful information produced by the research, education and training, and clinical activities of the centers established under subsection (b)(1) is disseminated throughout the Veterans Health Administration through the development of programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title and other means.

"(g) The official within the Central Office of the Veterans Health Administration responsible for mental health and behavioral sciences matters shall be responsible for the supervision of the operation of the centers established pursuant to subsection (b)(1).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 is amended by striking out the items relating to sections 7316 and 7317 and inserting in lieu thereof the following:

"7316. Mental illness research, education, and clinical centers.

"7317. Malpractice and negligence suits: defense by United States.

"7318. Hazardous research projects: indemnification of contractors.".

(c) REPORTS.—Not later than February 1 of each of 1993, 1994, and 1995, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience during the prior fiscal year under the centers established pursuant to section 7316 of title 38, United States Code (as added by subsection (a)). Each such report shall contain the following:

(1) A description of—

(A) the activities carried out at each center and the funding provided for such activities;

(B) the advances made at each center in research, education and training, and clinical activities relating to mental illness in veterans; and

(C) the efforts made by the Chief Medical Director of the Department of Veterans Affairs pursuant to subsection (e) of such section (as so added) to disseminate throughout the Veterans Health Administration useful information derived from such activities.

(2) The Secretary's evaluations of the effectiveness of the centers in fulfilling the purposes of the centers.

PART C—PROGRAM OF MARRIAGE AND FAMILY COUNSELING FOR CERTAIN VETERANS

SEC. 131. PROGRAM FOR FURNISHING MARRIAGE AND FAMILY COUNSELING.

(a) REQUIREMENT.—Subject to the availability of funds appropriated pursuant to the authorization in section 133 of this Act, the Secretary of Veterans Affairs shall conduct a program to furnish to the persons referred to in subsection (b) the marriage and family counseling services referred to in subsection (c). The Secretary shall commence the program not later than 30 days after the date of the enactment of this Act. The authority to conduct the program shall expire at the end of September 30, 1994.

(b) PERSONS ELIGIBLE FOR COUNSELING.—The persons eligible to receive marriage and family counseling services under the program are—

(1) veterans who were awarded a campaign medal for active-duty service during the Persian Gulf War and the spouses, children, and parents of such veterans; and

(2) veterans who are or were members of the reserve components who were called or ordered to active duty during the Persian Gulf War and the spouses, children, and parents of such members.

(c) COUNSELING SERVICES.—Under the program, the Secretary may provide marriage and family counseling that the Secretary determines, based on an assessment by a mental-health professional employed by the Department and designated by the Secretary (or, in an area where no such professional is available, a mental-health professional designated by the Secretary and performing services under a contract or fee arrangement with the Secretary) is necessary for the amelioration of psychological, marital, or familial difficulties that result from the active duty service referred to in subsection (b) (1) or (2).

(d) MANNER OF FURNISHING SERVICES.—(1) The Secretary shall furnish the marriage and family counseling services under the program as follows:

(A) By personnel of the Department of Veterans Affairs who are qualified to provide such counseling services.

(B) By appropriately certified marriage and family counselors employed by the Department.

(C) By qualified mental health professionals pursuant to contracts with the Department.

(2) The Secretary shall establish the qualifications required of personnel under subpara-

graphs (A) and (C) of paragraph (1) and shall prescribe the training, experience, and certification required of appropriately certified marriage and family counselors under subparagraph (B) of such paragraph.

(3) The Secretary may employ counselors to provide marriage and family counseling under paragraph (1)(B) and shall pay such counselors at the rates prevailing for such counseling among non-Department health-care professionals with similar training, experience, and certification in the locality in which such counselors provide such counseling, as determined by the Secretary.

(e) CONTRACT COUNSELING SERVICES.—(1) Subject to paragraphs (2) and (4), a mental health professional referred to in subsection (d)(1)(C) may furnish marriage and family counseling services to a person under the program as follows:

(A) For a period of not more than 15 days beginning on the date of the commencement of the furnishing of such services to the person.

(B) For a 90-day period beginning on such date if—

(i) the mental health professional submits to the Secretary a treatment plan with respect to the person not later than 15 days after such date; and

(ii) the plan and assessment made under subsection (a) are approved by an appropriate mental health professional of the Department designated for that purpose by the Chief Medical Director.

(C) For an additional 90-day period beginning on the date of the expiration of the 90-day period referred to in subparagraph (B) (or any subsequent 90-day period) if—

(i) not more than 30 days before the expiration of the 90-day period referred to in subparagraph (B) (or any subsequent 90-day period), the mental health professional submits to the Secretary a revised treatment plan containing a justification of the need of the person for additional counseling services; and

(ii) the plan is approved in accordance with the provisions of subparagraph (B)(ii).

(2)(A) A mental health professional referred to in paragraph (1) who assesses the need of any person for services for the purposes of subsection (c) may not furnish counseling services to that person.

(B) The Secretary may waive the prohibition referred to in subparagraph (A) for locations (as determined by the Secretary) in which the Secretary is unable to obtain the assessment referred to in that subparagraph from a mental health professional other than the mental health professional with whom the Secretary enters into contracts under subsection (d)(1)(C) for the furnishing of counseling services.

(3) The Secretary shall reimburse mental health professionals for the reasonable cost (as determined by the Secretary) of furnishing counseling services under paragraph (1). In the event of the disapproval of a treatment plan of a person submitted by a mental health professional under paragraph (1)(B)(i), the Secretary shall reimburse the mental health professional for the reasonable cost (as so determined) of furnishing counseling services to the person for the period beginning on the date of the commencement of such services and ending on the date of the disapproval.

(4) The Secretary may authorize the furnishing of counseling in an individual case for a period shorter than the 90-day period specified in subparagraph (B) or (C) of paragraph (1) and, upon further consideration, extend the shorter period to the full 90 days.

(5)(A) For the purposes of this subsection, the term "treatment plan", with respect to a person entitled to counseling services under the program, must include—

(i) an assessment by the mental health professional submitting the plan of the counseling needs of the person described in the plan on the date of the submittal of the plan; and

(ii) a description of the counseling services to be furnished to the person by the mental health professional during the 90-day period covered by the plan, including the number of counseling sessions proposed as part of such services.

(B) The Secretary shall prescribe an appropriate form for the treatment plan.

(f) COST RECOVERY.—For the purposes of section 1729 of title 38, United States Code, marriage and family counseling services furnished under the program shall be deemed to be care and services furnished by the Department under chapter 17 of such title, and the United States shall be entitled to recover or collect the reasonable cost of such services in accordance with that section.

SEC. 132. DEFINITIONS.

For the purposes of this part, the terms "veteran", "child", "parent", "active duty", "reserve component", "spouse", and "Persian Gulf War" have the meanings given such terms in section 101(2), (4), (5), (21), (27), (31), and (33) of title 38, United States Code, respectively.

SEC. 133. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,000,000 for fiscal year 1991 and $10,000,000 for each of fiscal years 1992, 1993, and 1994 to carry out this part. Funds authorized to be appropriated under this section shall be considered to be emergency requirements for the purposes of section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)(i)), but may be obligated for the program conducted pursuant to section 131 of this Act only if the President designates an appropriation under this section as an emergency requirement pursuant to such section 251(b)(2)(D)(i).

SEC. 134. REPORTS.

(a) INTERIM REPORT.—Not later than January 1, 1993, the Secretary shall submit to Congress a report on the program conducted pursuant to section 131 of this Act. The report shall contain information regarding the persons furnished counseling services under the program, including—

(1) the number of such persons, stated as a total number and separately for each eligibility status referred to in section 131(b) of this Act;

(2) the age and gender of such persons;

(3) the manner in which such persons were furnished such services under the program; and

(4) the number of counseling sessions furnished to such persons.

(b) FINAL REPORT.—Not later than January 1, 1994, the Secretary shall submit to Congress a report on the program. The report shall contain updates of the information referred to in subsection (a) and a description and evaluation of the program and shall include such recommendations with respect to the program as the Secretary considers appropriate.

TITLE II—GENERAL HEALTH CARE

PART A—GENERAL HEALTH

SEC. 201. ELIGIBILITY FOR PROSTHETIC DEVICES AND CERTAIN OTHER MEDICAL ITEMS.

(a) IN GENERAL.—Section 1701(6)(A)(i) is amended by striking out "(except under the conditions described in section 1712(f)(1)(A)(i) of this title)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date on which the Secretary of Veterans Affairs submits to the Committees on Veterans' Affairs of the Senate and House of Representatives copies of the Secretary's written determination that implementation of that amendment will not result in (1) substantial delay, or contribute substantially to delays, in the furnishing of prosthetic items in connection with the treatment of disabilities that are service connected (within the meaning of that term provided in section 101(16) of title 38, United States Code), or (2) the denial of such items in connection with the treatment of such disabilities.

SEC. 202. INCREASE IN MAXIMUM LIMITATIONS ON HOME HEALTH SERVICES.

Section 1717(a)(2) is amended—

(1) in subparagraph (A), by striking out "$2,500" and inserting in lieu thereof "$5,000"; and

(2) in subparagraph (B), by striking out "$600" and inserting in lieu thereof "$1,200".

SEC. 203. EXPANDED SERVICES FOR HOMELESS VETERANS.

(a) ASSESSMENT AND PLAN.—(1)(A) The Secretary of Veterans Affairs shall require the director of each medical center or the director of each regional benefits office to make an assessment of the needs of homeless veterans living within the area served by the director of the medical center concerned or the region of the director of the region concerned, as the case may be.

(B) Each assessment shall identify the needs of homeless veterans with respect to the following areas:

(i) Health care.

(ii) Education and training.

(iii) Employment.

(iv) Shelter.

(v) Counseling.

(vi) Outreach services.

(C) Each assessment shall also indicate the extent to which the needs referred to in clauses (i) through (vi) of subparagraph (B) are being met adequately by the programs of the Department of Veterans Affairs, of other departments and agencies of the Federal Government, of State and local governments, and of nongovernmental organizations.

(D) Each assessment shall be made in consultation with all facilities of the Department of Veterans Affairs serving veterans in the appropriate service area and with community-based organizations that have experience working with homeless persons in that area.

(E) Each assessment shall be carried out in accordance with uniform procedures and guidelines prescribed by the Secretary.

(2)(A) The director of each medical center shall develop a plan for each of fiscal years 1992, 1993, and 1994 for the provision of outreach services and other services to meet the needs that are identified in the assessment referred to in paragraph (1)(B) on the part of homeless veterans in the area served by the medical center concerned. The director of each medical center shall develop such plans in consultation with the director of the appropriate regional benefits office, the heads of other facilities of the Department of Veterans Affairs, and the Director for Veterans' Employment and Training within the State concerned.

(B) Each plan developed pursuant to subparagraph (A) shall—

(i) describe the actions to be taken by the Department of Veterans Affairs to meet, directly or otherwise, those needs of homeless veterans that are identified in the assessment referred to in paragraph (1) as not being adequately met by existing programs; and

(ii) provide that the director of the medical center concerned or other official of the Department of Veterans Affairs will take appropriate action to meet those needs, to the maximum extent practicable, through existing programs and available resources.

(C) The director of each medical center shall coordinate the development of the plan for the area served by the medical center concerned with other programs of the Department of Veter-

ans Affairs, other departments and agencies of the Federal Government, State and local governments, and community-based organizations and other private entities that provide services to homeless persons.

(D) Each plan shall include a list of all public and private programs that provide assistance to homeless persons or homeless veterans in the area concerned and shall describe the services offered by those programs.

(3) The director of each medical center shall be responsible for carrying out the plan developed with respect to the area served by that medical center. In carrying out such plan, the director shall take appropriate actions to seek to inform each homeless veteran, and each veteran who is at risk of becoming homeless (as determined by the director), of the services available to the veteran within the area served by the medical center.

(4) The director of each medical center shall disseminate to other departments and agencies of the Federal Government, all State and local governments, and all private entities that provide services to homeless persons or homeless veterans within the area served by the medical center information regarding the services provided to homeless veterans by the medical center or other facility of the Department of Veterans Affairs.

(b) PILOT PROGRAM FOR PROVIDING DOMICILIARY CARE FOR HOMELESS VETERANS.—(1) The Secretary shall conduct a pilot program to determine the effectiveness of providing, through existing community-based organizations, domiciliary care (including medical services) to homeless veterans eligible for such care from the Department of Veterans Affairs under other provisions of law. In carrying out the program, the Secretary may enter into contracts with community-based organizations that have demonstrated effectiveness in providing relevant services to homeless persons. The Secretary shall conduct the program at not more than 15 locations throughout the United States.

(2) In entering into contracts under this section, the Secretary shall give preference to community-based organizations that offer the most comprehensive care and services to homeless individuals, particularly services that meet needs identified in the assessments referred to in subsection (a)(1) as not being adequately met by existing programs.

(3) There is authorized to be appropriated to carry out this subsection $1,500,000 for each of fiscal years 1992, 1993, and 1994.

(4) If the Secretary determines that the pilot program conducted pursuant to paragraph (1) is meeting effectively the domiciliary care needs of homeless veterans and that additional funds are needed for that program, the Secretary may transfer funds appropriated to carry out section 801 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100-628; 102 Stat. 3257), as amended by subsection (e), to the account available to carry out the pilot program provided for in this subsection, except that no amount may be transferred in any fiscal year that would reduce the amount available for expenditure under such section 801 below an amount equal to the amount expended under that section in the preceding fiscal year. Funds transferred under this paragraph shall be available for the same period for which originally appropriated.

(c) AUTHORITY TO ACCEPT DONATIONS FOR CERTAIN PROGRAMS.—The Secretary may accept donations of funds and services for the purposes of providing one-stop, non-residential services and mobile support teams and for expanding the medical services to homeless veterans eligible for such services from the Department of Veterans Affairs.

(d) DEFINITIONS.—As used in subsections (a), (b), and (c):

(1) The term "medical center" means a medical center of the Department of Veterans Affairs.

(2) The term "regional benefits office" means a regional benefits office of the Department of Veterans Affairs.

(3) The term "veteran" has the same meaning given such term by section 101(2) of title 38, United States Code.

(4) The term "homeless" has the same meaning given such term by section 103(a), as limited by section 103(c), of the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77; 101 Stat. 485).

(e) EXTENSION OF CERTAIN PROGRAMS FOR HOMELESS VETERANS.—(1) Section 801 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100-628; 102 Stat. 3257) is amended—

(A) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Veterans Affairs $30,000,000 for each of the fiscal years 1989 and 1990; $50,000,000 for fiscal year 1991; $57,500,000 for fiscal year 1992; and $65,000,000 for fiscal year 1993. Funds appropriated pursuant to this section shall be in addition to any funds appropriated pursuant to any other authorizations (whether definite or indefinite) for such fiscal years.";

(B) in subsection (b)—

(i) by inserting "(1)" after "DOMICILIARY CARE.—";

(ii) by striking out "50 percent" and inserting in lieu thereof "the amounts specified in paragraph (2)";

(iii) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively; and

(iv) by adding at the end the following new paragraph:

"(2) The amounts available for the purposes referred to in paragraph (1) are as follows:

"(A) For fiscal year 1989, $15,000,000.

"(B) For fiscal year 1990, $15,000,000.

"(C) For fiscal year 1991, $20,000,000.

"(D) For fiscal year 1992, $22,500,000.

"(E) For fiscal year 1993, $25,000,000."; and

(C) in subsection (c)—

(i) by inserting "(1)" after "HOMELESS VETERANS.—";

(ii) by striking out "50 percent" and inserting in lieu thereof "the amounts specified in paragraph (2)"; and

(iii) by adding at the end the following new paragraph:

"(2) The amounts available for the purposes referred to in paragraph (1) are as follows:

"(A) For fiscal year 1989, $15,000,000.

"(B) For fiscal year 1990, $15,000,000.

"(C) For fiscal year 1991, $30,000,000.

"(D) For fiscal year 1992, $35,000,000.

"(E) For fiscal year 1993, $40,000,000.".

(2) EXTENSION OF PROGRAM FOR MENTALLY ILL HOMELESS VETERANS.—Section 115(d) of the Veterans' Benefits and Services Act of 1988 (38 U.S.C. 1712 note) is amended by striking out "1992" and inserting in lieu thereof "1994".

(f) REPORT.—Not later than February 1, 1993, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing an evaluation of the programs referred to in subsections (a), (b), and (c).

SEC. 204. EXTENSION OF PILOT PROGRAM OF MOBILE HEALTH-CARE CLINICS.

Section 113(b) of the Veterans' Benefits and Services Act of 1988 (38 U.S.C. 1712 note) is amended—

(1) by striking out "and 1990" and inserting in lieu thereof a comma and "1990, 1991, 1992, and 1993"; and

(2) by adding at the end the following new sentence: "Funds appropriated to carry out the pilot program authorized by this section shall remain available until expended.".

SEC. 205. ADVISORY COMMITTEE ON PROSTHETICS AND SPECIAL-DISABILITIES PROGRAMS.

(a) ESTABLISHING OF ADVISORY COMMITTEE.—Chapter 5 is amended by adding at the end of subchapter III the following new section :

"§543. Advisory Committee on Prosthetics and Special-Disabilities Programs

"(a)(1) The Secretary shall establish an advisory committee to be known as the Advisory Committee on Prosthetics and Special-Disabilities Programs (hereinafter in this section referred to as the 'Committee').

"(2) The members of the Committee shall be appointed by the Secretary and shall include—

"(A) appropriate representatives of veterans who use prosthetic devices;

"(B) individuals who are recognized experts in the fields of prosthetics engineering;

"(C) individuals engaged in prosthetics research;

"(D) individuals engaged in rehabilitative medicine;

"(E) individuals engaged in the clinical treatment of individuals who are users of prosthetic devices;

"(F) individuals engaged in clinical treatment in the Department's special-disabilities programs; and

"(G) such other individuals with pertinent expertise or experience as the Secretary may determine appropriate.

"(3) The Committee may also include, as ex officio members, individuals appointed from the Department.

"(4) The Secretary shall determine the total number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that the term of office of any such member may not exceed three years.

"(b)(1) It shall be the function of the Committee to advise the Secretary and the Chief Medical Director on all matters related to—

"(A) prosthetics and special-disabilities programs administered by the Secretary;

"(B) the coordination of programs of the Department for the development and testing of, and for information exchange regarding, prosthetic devices;

"(C) the coordination of Department and non-Department programs that involve the development and testing of prosthetic devices; and

"(D) the adequacy of funding for the prosthetics and special-disabilities programs of the Department.

"(2) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee on the matters described in paragraph (1) of this subsection.

"(c) Not later than January 15 of 1992, 1993, 1994, and 1995, the Committee shall submit to the Secretary and the Committees on Veterans Affairs' of the Senate and House of Representatives a report on the effectiveness of the prosthetics and special-disabilities programs administered by the Secretary during the preceding fiscal year. Not more than 30 days after the date on which any such report is received by the Secretary, the Secretary shall submit a report to such committees commenting on the report of the Committee.

"(d) As used in this section, the term 'special-disabilities programs' includes all programs administered by the Secretary for spinal-cord-injured veterans, blind veterans, veterans who have lost or lost the use of extremities, hearing-impaired veterans, and other veterans with serious incapacities in terms of daily life functions.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 5 is amended by adding after the item relating to section 542 the following:

"543. Advisory Committee on Prosthetics and Special-Disabilities Programs.".

SEC. 206. SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITIES AFFECTING PROCREATION.

(a) DEFINITION OF "MEDICAL SERVICES".—Clause (A) of section 1701(6), as amended by section 201 of this Act, is further amended to read as follows:

"(A)(i) surgical services, (ii) services to achieve pregnancy in a veteran or a veteran's spouse when such services are necessary to overcome a service-connected disability impairing a veteran's procreative ability (but only if such services are furnished by contract, except for services which the Chief Medical Director determines that Department of Veterans Affairs facilities are fully capable of furnishing in a cost-effective manner), (iii) dental services and appliances as described in sections 1710 and 1712 of this title, (iv) optometric and podiatric services, (v) (in the case of a person otherwise receiving care or services under this chapter) preventive health-care services as defined in section 1762 of this title, (vi) wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the Secretary determines to be reasonable and necessary, and (vii) travel and incidental expenses pursuant to the provisions of section 111 of this title; and".

(b) ADVISORY COMMITTEE.—The Chief Medical Director of the Department of Veterans Affairs shall appoint an advisory committee to advise the Chief Medical Director on the exercise of authority to furnish services described in subclause (ii) of section 1701(6)(A) of title 38, United States Code, as added by subsection (a). Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory committee appointed under this subsection.

SEC. 207. PREVENTIVE MEDICINE.

(a) EXTENSION OF PILOT PROGRAM.—Section 1763(a)(1) is amended to read as follows:

"(a)(1) In order to carry out the purpose of this subchapter, the Secretary shall, through fiscal year 1996—

"(A) furnish annually at least two preventive health-care services that the Secretary determines to be feasible and appropriate to any veteran being furnished care or services under section 1710(a)(1) or 1712(a) (1) or (2) of this title; and

"(B) implement annually at each Department of Veterans Affairs health-care facility a major preventive health-care and health-promotion initiative for such veterans.".

(b) LIMIT ON EXPENDITURES.—Section 1763(c) is amended—

(1) by striking out "or" after "1983,"; and

(2) by striking out the period at the end and inserting in lieu thereof ", more than $16,000,000 in fiscal year 1992, more than $17,000,000 in fiscal year 1993, more than $18,000,000 in fiscal year 1994, more than $19,000,000 in fiscal year 1995, or more than $20,000,000 in fiscal year 1996.".

(c) DIRECTOR OF PREVENTIVE HEALTH-CARE AND HEALTH-PROMOTION PROGRAMS.—Section 1763 is amended by adding at the end the following new subsection:

"(d)(1) The Chief Medical Director shall designate an official in the Veterans Health Administration to act as the Director of Preventive Health-Care and Health-Promotion Programs.

"(2) The Director of Preventive Health-Care and Health-Promotion Programs shall prepare guidance regarding, and be responsible for coordinating, evaluating, and advising the Chief Medical Director on, all activities carried out under this subchapter.".

(d) REPORTS.—Section 1764 is amended to read as follows:

"(a) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives—

"(1) not later than February 1, 1994, an interim report on the experience under the program provided for by this subchapter; and

"(2) not later than February 1, 1996, a final report on the experience under the program.

"(b) Each report submitted pursuant to subsection (a) of this section shall include, with respect to the experience under the program through September 30 of the year preceding the deadline for submission of such report specified in subsection (a)—

"(1) a description of the types of services that have been furnished pursuant to section 1763(a)(1)(A) of this title and the number of veterans who received such services;

"(2) a description of the preventive health-care and health-promotion initiatives that were implemented pursuant to section 1763(a)(1)(B) of this title and the number of veterans who have been served through such initiatives;

"(3) a description of the types of preventive health-care services that have been furnished pursuant to sections 1710 and 1712 of this title and the number of veterans who received such services;

"(4) a description of activities conducted pursuant to section 1763(a)(2) of this title;

"(5) an assessment of the results of the program; and

"(6) any plans for administrative action, and any recommendations for legislation, that the Secretary considers appropriate.".

(e) CONFORMING AND CLARIFYING AMENDMENTS.—(1) Section 1761(1) is amended by striking out ", including veterans with service-connected disabilities" and all that follows through "disability under this chapter,".

(2) Clauses (1) and (2) of section 1762 are amended to read as follows:

"(1) periodic medical examinations (including screenings for high blood pressure, glaucoma, colorectal cancer, and cholesterol) and dental examinations;

"(2) patient health education (including education about nutrition, stress management, physical fitness, and smoking cessation);".

SEC. 208. ASSISTIVE DOGS FOR CERTAIN DISABLED VETERANS.

(a) AUTHORITY TO PROVIDE ASSISTIVE DOGS.—Section 1714 is amended by adding at the end the following new subsection:

"(c)(1) The Secretary may provide—

"(A) a service dog to a quadriplegic veteran who has a service-connected disability; and

"(B) a signal dog to a veteran who has a service-connected hearing impairment and is in need of the assistance of such a dog.

"(2) The Secretary may pay travel and incidental expenses to veterans referred to in paragraph (1), under the terms and conditions set forth in section 111 of this title, for travel to and from such veteran's homes that are incurred in becoming adjusted to the service dogs and signal dogs referred to in such paragraph.

"(3) For the purposes of this subsection:

"(A) The term 'service dog' means a dog trained to assist quadriplegic individuals in the performance of daily living tasks.

"(B) The term 'signal dog' means a dog trained to provide hearing assistance to deaf persons.".

(b) TECHNICAL CORRECTIONS.—Section 1714(b) is amended by striking out "(under the terms and conditions set forth in section 111 of this title) to and from their homes and" and inserting in lieu thereof ", under the terms and conditions set forth in section 111 of this title, for travel to and from such veteran's homes that are".

SEC. 209. PROSTHETIC SERVICES REPORT.

Not later than January 15, 1992, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

(1) the Secretary's evaluation of the reasons for the backlog that occurred in the procurement of prosthetic appliances in fiscal year 1989, and for the failure to furnish prosthetic appliances in accordance with the priority established in section 1712(i) of title 38, United States Code; and

(2) a description of the actions that the Secretary has taken and plans to take to prevent a recurrence of—

(A) the failure to furnish prosthetic appliances in accordance with such priority, including a schedule for any such planned actions; and

(B) the accumulation of a significant backlog in the procurement of prosthetic appliances.

SEC. 210. REPEAL OF AUTHORITY TO FURNISH TOBACCO TO VETERANS RECEIVING HOSPITAL OR DOMICILIARY CARE.

(a) IN GENERAL.—Section 1715 is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by striking out the item relating to section 1715.

SEC. 211. DEVELOPMENT OF RECOMMENDED LEGISLATION FOR THE ELIMINATION OF INCONSISTENCIES IN CERTAIN VETERANS BENEFITS LAWS.

(a) REQUIREMENT TO ESTABLISH TASK FORCE.—The Secretary of Veterans Affairs shall establish a task force to recommend policies and legislation for the elimination of inconsistencies among provisions of law relating to veterans' eligibility for certain health-care benefits.

(b) COMPOSITION OF TASK FORCE.—The task force shall be composed of the following:

(1) Employees of the Department of Veterans Affairs involved in the administration of programs affected by the inconsistencies in law referred to in subsection (a).

(2) Representatives of organizations concerned with the administration of such programs, as determined by the Secretary.

(c) RESPONSIBILITIES OF TASK FORCE.—The task force shall—

(1) identify inconsistencies among sections 1701(6), 1712, 1714, 1717, and 1719 of title 38, United States Code, and the implementation of such sections;

(2) after consultation with appropriate representatives of veterans, develop policy recommendations and legislative proposals for the elimination of any such inconsistencies; and

(3) not later than the date specified by the Secretary, submit to the Secretary a report containing (A) descriptions of the inconsistencies identified by the task force, (B) the policies and legislative proposals recommended by the task force for the elimination of such inconsistencies, and (C) the reasons for each such recommendation.

(d) ACTION BY THE SECRETARY.—The Secretary shall—

(1) review the report submitted by the task force; and

(2) either (A) approve the recommendations for legislation contained in the report, or (B) with respect to any such recommendations that the Secretary does not approve, recommend, or decline to recommend, alternative legislative proposals that the Secretary considers appropriate for the elimination of the inconsistencies identified by the task force.

(e) SUBMISSION OF RECOMMENDATIONS TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives—

(1) the report submitted to the Secretary by the task force; and

(2) a report containing—

(A) any legislation recommended by the Secretary for the elimination of the inconsistencies identified by the task force;

(B) an analysis of any legislation recommended by the Secretary; and

(C) the reasons for any differences between any legislation recommended by the Secretary and the legislation recommended by the task force.

SEC. 212. ELIGIBILITY OF FORMER PRISONERS OF WAR FOR OUTPATIENT MEDICAL SERVICES.

Section 1712(a)(1) is amended—

(1) at the end of clause (B), by striking out "and";

(2) at the end of clause (C), by striking out the period and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new clause:

"(D) to any former prisoner of war for any disability.".

SEC. 213. PILOT PROGRAM FOR FURNISHING ASSISTIVE MONKEYS TO CERTAIN VETERANS.

(a) REQUIREMENT FOR PILOT PROGRAM.—During fiscal years 1992, 1993, 1994, and 1995, the Secretary of Veterans Affairs shall conduct a pilot program under which the Secretary shall—

(1) furnish assistive monkeys to quadriplegic veterans who have service-connected disabilities rated 50 percent or more; and

(2) facilitate the furnishing of assistive monkeys to other quadriplegic veterans.

(b) SELECTION OF VETERAN-PARTICIPANTS.—(1) In determining whether to furnish an assistive monkey to a veteran, or to facilitate the furnishing of an assistive monkey to a veteran, under the pilot program, the Secretary shall (A) consider the extent to which the veteran needs and can benefit from the assistance of the monkey, and (B) provide a preference for veterans who have service-connected quadriplegia.

(2) The Secretary shall approve a veteran for participation in the pilot program only upon the Secretary's determination that the veteran is well-suited for—

(A) carrying out the responsibilities involved in the care of the monkey; and

(B) effectively using the monkey for assistance in performing the veteran's daily living tasks.

(c) ADMINISTRATIVE MATTERS.—(1) The Secretary is authorized to enter into contracts for the furnishing of assistive monkeys under subsection (a). Under such contracts the Secretary may make advance payments for the furnishing of the monkeys before receipt of the monkeys and may either reimburse the provider of such monkeys for the costs of training the monkeys or, subject to such terms and conditions as the Secretary determines are necessary to protect the interests of the Government, make advance payments for such costs before the costs are incurred.

(2) Ownership of an assistive monkey furnished to a veteran under the pilot program shall be determined in accordance with a contract between the provider of the monkey and the veteran.

(3) The Secretary shall provide for the protection of the welfare of assistive monkeys furnished veterans under the pilot program.

(d) EVALUATION AND REPORT.—(1) The Secretary shall evaluate the conduct of the pilot program, the nature and extent of the benefit to veterans furnished assistive monkeys under the program (including any benefits related to employment), the costs and cost-effectiveness of furnishing such monkeys to quadriplegic veterans, and the effects of such program on the recruitment and retention of paid primary caregivers for veterans receiving monkeys and on the morale of unpaid primary caregivers for such veterans.

(2) Not later than February 1, 1995, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the pilot program. The report shall contain—

(A) the results of the evaluation carried out under paragraph (1), including descriptions of the procedures and criteria used to select veterans to receive assistive monkeys, the nature and extent of the benefit that the veterans received from the assistance of such monkeys, and the amounts and types of costs incurred by the Department of Veterans Affairs in the conduct of the program;

(B) the Secretary's views on the relationship between the furnishing of an assistive monkey to a veteran and the payment to a veteran of (i) an aid and attendance allowance under section 1114(r) of title 38, United States Code, or (ii) an annual rate of pension under section 1521 of such title based on the veteran's need of regular aid and attendance; and

(C) any recommendations that the Secretary considers appropriate regarding whether the pilot program should be continued or whether the authority to furnish assistive monkeys to quadriplegic veterans should be made permanent.

(e) EVALUATION OF PRIVATE ASSISTIVE MONKEY PLACEMENT PROGRAMS.—Before furnishing assistive monkeys to veterans under the pilot program, the Chief Medical Director of the Department of Veterans Affairs shall provide for the conduct of an independent evaluation of the way that assistive monkeys would be treated during training and placement under the pilot program. The Chief Medical Director shall ensure that the person or organization performing the evaluation consults with representatives of appropriate animal welfare organizations prior to conducting the evaluation.

(f) DEFINITIONS.—For the purposes of this section—

(1) the terms "veterans" and "service-connected" have the meanings given those terms in paragraphs (2) and (16), respectively, of section 101 of title 38, United States Code; and

(2) the term "assistive monkey" means a monkey that is specially trained to assist in the performance of daily living tasks for quadriplegic individuals.

SEC. 214. EXTENSION OF CERTAIN TEMPORARY PROGRAMS.

(a) PROGRAM FOR TRIAL WORK PERIODS AND VOCATIONAL REHABILITATION.—Section 1163(a)(2)(B) is amended by striking out "January 31, 1992" and inserting in lieu thereof "December 31, 1992".

(b) PROGRAM OF VOCATIONAL TRAINING FOR NEW PENSION RECIPIENTS.—Section 1524(a)(4) is amended by striking out "January 31, 1992" and inserting in lieu thereof "December 31, 1992".

(c) PROTECTION OF HEALTH-CARE ELIGIBILITY.—Section 1525(b)(2) is amended by striking out "January 31, 1992" and inserting in lieu thereof "December 31, 1992".

SEC. 215. PROHIBITION AGAINST USE OF PRICES OF DRUGS PAID BY THE DEPARTMENT OF VETERANS AFFAIRS IN THE CALCULATION OF MEDICAID REBATES.

Section 519(a) of Public Law 102–139 is amended to read as follows:

"(a) the following shall not be used to calculate Medicaid rebates paid by drug and biological manufacturers:

"(1) Prices of drugs and biologicals paid by the Department of Veterans Affairs and prices of drugs and biologicals on contracts administered by the Department of Veterans Affairs.

"(2) Prices (after any rebate or discount) of drugs and biologicals paid pursuant to contracts entered into with States which include, as a basis for rebates or discounts, the prices referred to in clause (1);".

PART B—HEALTH-CARE PERSONNEL

SEC. 221. PAY ENHANCEMENTS FOR CERTAIN HEALTH-CARE PERSONNEL.

Section 7454(b) is amended by striking out "or occupational therapists," and inserting in lieu thereof "occupational therapists, or any other health-care personnel furnishing direct care to patients or providing services incident to the furnishing of direct care to patients,".

SEC. 222. SPECIAL RATES CAP.

Section 7455(c) is amended—

(1) by inserting "(1)" after "(c)";

(2) by inserting "by two times" after "exceed" the first place it appears; and

(3) by inserting at the end the following new paragraph:

"(2) Whenever the amount of an increase under subsection (a)(1) results in a rate of basic pay for a position being equal to or greater than the amount that is 94 percent of the maximum amount permitted under paragraph (1), the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the increase and the amount thereof.".

SEC. 223. RATES OF PAY FOR CERTAIN PSYCHOLOGISTS.

Notwithstanding any other provision of law, the Secretary of Veterans Affairs, not later than 90 days after the date of the enactment of this Act, shall utilize the authority provided in section 7455 of title 38, United States Code, to increase the rates of pay for clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accredited authority recognized by the Secretary unless the Chief Medical Director of the Department of Veterans Affairs determines that such psychologists are not needed to furnish appropriate quality of psychological services for veterans. The amount by which such rate of pay shall be increased shall be the amount determined by the Secretary, upon the recommendation of the Chief Medical Director, to be necessary to make the pay for such psychologists competitive with the pay of psychologists with the same qualifications and credentials serving in non-Department of Veterans Affairs capacities comparable to the Department capacities in which the Department psychologists are serving.

SEC. 224. CHILD-CARE SERVICES.

(a) ASSESSMENTS OF EMPLOYEE NEEDS FOR CHILD-CARE SERVICES.—(1) In order to provide for adequate planning for the availability of child-care services for children of Department of Veterans Affairs employees, the Secretary of Veterans Affairs shall require the director of each Department of Veterans Affairs medical center and regional office to—

(A) assess the needs of such employees for child-care services; and

(B) submit an annual report to the Secretary containing—

(i) the director's findings relating to the needs of such employees for such services and the extent to which such services are available to meet such needs, and

(ii) a proposal (including a schedule) for meeting fully any unmet needs or, if the director determines that it is impracticable to meet such needs fully, a detailed explanation of the reasons for such determination and a proposal (including a schedule) for meeting as many of such needs as is practicable.

(2) In making the assessment referred to in paragraph (1), the director shall consult with appropriate representatives of the employees at the center or office.

(3) The annual report referred to in this subsection shall be submitted not later than March 1 of each year.

(b) TECHNICAL AMENDMENT.—Subsection (b) of section 7809 is amended by striking out "of this section" in the final sentence.

SEC. 225. SPECIAL PAY FOR CERTAIN PHYSICIANS AND DENTISTS BASED ON BOARD CERTIFICATION.

(a) FULL-TIME PHYSICIANS AND DENTISTS.—Section 7437(e)(1)(C) is amended by striking out "only for the special pay" and all that follows through the period and inserting in lieu thereof "for no special pay factors other than primary, full-time, length of service, and specialty or board certification.".

(b) PART-TIME PHYSICIANS AND DENTISTS.—Section 7437(e)(2)(C) is amended by striking out "only for the special pay" and all that follows through the period and inserting in lieu thereof "for no special pay factors other than primary, full-time, length of service, and specialty or board certification.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if enacted with the amendment made by section 102 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Public Law 102-40; 105 Stat. 187).

(d) AVAILABILITY OF FUNDS.—Expenses incurred for periods before October 1, 1991, by reason of the enactment of the amendments made by subsections (a) and (b) may be charged to fiscal year 1992 appropriations for the same purpose.

SEC. 226. TRANSITION RULE FOR PAYMENT OF SPECIAL PAY UNDER CERTAIN SPECIAL PAY AGREEMENTS.

(a) TRANSITION RULE.—Section 104(d) of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Public Law 102-40; 105 Stat. 199) is amended by adding at the end the following: "In the case of a physician or dentist who was employed by the Department of Veterans Affairs on July 14, 1991, and who was ready and willing to enter into an agreement under such subchapter on such date, the agreement entered into by the physician or dentist shall take effect on that date without regard to the date of the approval of the agreement under the regulations prescribed to carry out such subchapter.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted with section 104 of such Act.

(c) AVAILABILITY OF FUNDS.—Expenses incurred for periods before October 1, 1991, by reason of the enactment of the amendment made by subsection (a) may be charged to fiscal year 1992 appropriations for the same purpose.

SEC. 227. AUTHORITY TO APPOINT NON-PHYSICIAN DIRECTORS TO THE OFFICE OF THE CHIEF MEDICAL DIRECTOR.

Section 7306(a) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph (7):

"(7) Such directors of such other professional or auxiliary services as may be appointed to suit the needs of the Department, who shall be responsible to the Chief Medical Director for the operation of their respective services.".

SEC. 228. EXPANSION OF DIRECTOR GRADE OF THE PHYSICIAN AND DENTIST PAY SCHEDULE.

Section 7404(b)(2) is amended in the first sentence by inserting ", or comparable position" before the period.

TITLE III—MINORITY AFFAIRS

SEC. 301. ASSIGNMENT OF MINORITY ISSUES TO AN ASSISTANT SECRETARY OF VETERANS AFFAIRS.

(a) POSITION AND FUNCTIONS OF ASSISTANT SECRETARY.—Section 4 of the Department of Veterans Affairs Act (Public Law 100-527; 102 Stat. 2638) is amended by adding at the end of subsection (b) the following new paragraph:

"(11) The review and assessment of the effects of policies, regulations, and programs and other activities of the Department on minority veterans and the coordination and monitoring of policies facilitating access of such veterans to services and benefits provided under laws administered by the Secretary.".

(b) "MINORITY VETERANS" DEFINED.—Section 4 of such Act is further amended by adding at the end the following new subsection:

"(g) DEFINITIONS.—As used in this section:

"(1) The term 'minority veterans' means veterans who are—

"(A) black individuals;

"(B) Native Americans;

"(C) Hispanic-Americans;

"(D) Asian-Americans;

"(E) Pacific-Islander-Americans; and

"(F) women.

"(2) The term 'veteran' has the meaning given that term in section 101(2) of title 38, United States Code.

"(3) The term 'Native American' means an Indian, a Native Hawaiian, or an Alaska Native.

"(4) The term 'Indian' has the meaning given that term in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(a)).

"(5) The term 'Native Hawaiian' has the meaning given that term in section 815(3) of the Native American Programs Act of 1974 (42 U.S.C. 2992c(3)).

"(6) The term 'Alaska Native' has the meaning given the term 'Native' in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

"(7) The term 'Asian-American' means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent of Asia.

"(8) The term 'Pacific-Islander-American' means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Pacific Islands.".

SEC. 302. REESTABLISHMENT OF THE ADVISORY COMMITTEE ON NATIVE-AMERICAN VETERANS.

(a) ESTABLISHMENT.—Effective October 1, 1991, the Advisory Committee on Native-American Veterans established by section 19032 of the Veterans' Health-Care Amendments of 1986 (title XIX of Public Law 99-272; 100 Stat. 388) is reestablished.

(b) INCORPORATION OF PROVISIONS OF PRIOR LAW.—Subsections (b) through (e) and (g) of section 19032 of the Veterans' Health-Care Amendments of 1986 shall apply to the Advisory Committee on Native-American Veterans reestablished by subsection (a).

(c) REPORTS.—(1) Not later than March 31, 1992, and March 31, 1993, the Committee shall submit to the Secretary of Veterans Affairs a report containing the findings and any recommendations of the Committee regarding the matters described in section 19032(b) of the Veterans' Health-Care Amendments of 1986 that were examined and evaluated by the Committee during the fiscal year preceding the fiscal year in which the report is submitted.

(2) Not later than 60 days after receiving each such report, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comments and recommendations concerning the report that the Secretary considers appropriate.

(d) TERMINATION.—The Committee shall expire 90 days after the date on which the second report is transmitted by the Committee pursuant to subsection (c).

TITLE IV—MISCELLANEOUS

SEC. 401. CLARIFICATION OF PROHIBITION ON PAYMENT OF ATTORNEYS' FEES.

(a) IN GENERAL.—Section 5904(c) is amended—

(1) by inserting "(A)" after "(c)(1)";

(2) by redesignating paragraph (2) as subparagraph (B);

(3) in subparagraph (B) (as so redesignated), by striking out "paragraph (1)" and inserting in lieu thereof "subparagraph (A)"; and

(4) by adding at the end the following new paragraph:

"(2) The provisions of this subsection shall apply only to cases involving a claim for benefits submitted by any person applying for benefits under the laws administered by the Department, and such provisions shall not apply in cases in which the Government is proceeding against a person to collect an indebtedness or in which other attorneys' fee statutes apply.".

(b) APPLICATION OF PROHIBITION.—Section 3404(c) of title 38, United States Code, as in effect on November 17, 1988, shall apply only to cases involving a claim for benefits submitted by any person applying for benefits under the laws administered by the Department and shall not apply in cases in which the Government is proceeding against a person to collect an indebtedness or in which other attorneys' fee statutes apply.

SEC. 402. AUTHORIZATION TO FLY POW/MIA FLAG AT NATIONAL CEMETERIES OF THE UNITED STATES.

(a) AUTHORIZATION.—The director of each national cemetery is authorized to display a POW/MIA flag on a flagstaff at that cemetery. In determining whether to display a POW/MIA flag at the cemetery, the director is authorized and urged to consult with appropriate representatives of local civic and veterans' organizations having an interest in the activities of the cemetery.

(b) PROHIBITION.—No officer or other employee of the Federal Government may obligate appropriated funds for the purpose of purchasing a POW/MIA flag for display at a national cemetery.

(c) DEFINITIONS.—In this section:

(1) The term "national cemetery" means any cemetery in the National Cemetery System referred to in section 1000 of title 38, United States Code.

(2) The term "POW/MIA flag" means the flag designated as the National League of Families POW/MIA flag pursuant to section 2 of the Joint Resolution designating September 21, 1990, as "National POW/MIA Recognition Day", and recognizing the National League of Families POW/MIA flag (Public Law 101-355; 104 Stat. 416).

(3) The term "flagstaff" means any flagstaff at a national cemetery, including the main flagstaff of the cemetery.

Mr. DECONCINI. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. DECONCINI. Mr. President, I send to the desk an amendment to the title and ask that it be agreed to.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

Amend the title so as to read: "An Act to improve the provision of health care and other services to veterans by the Department of Veterans Affairs, and for other purposes.".

The PRESIDING OFFICER. Without objection, the amendment to the title is agreed to.

Mr. DECONCINI. Mr. President, I want to thank the Senator from Wyo-

ming for his cooperation and everybody who has helped here, particularly the Senator from Pennsylvania who has been indeed very helpful in the passage of this bill, and the cooperation is unsurpassed.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I shall be very brief because I know the majority leader wants to move on to the nomination of Attorney General-designate Barr.

But I thank my distinguished colleague from Arizona and the distinguished majority leader and I thank the chairman of the committee, Senator CRANSTON, who is on the floor now, and my distinguished colleague from Wyoming for the spirited debate and the even more spirited debate in the well. I think one day when the laurels of the Senate are published, if we ever had a record of what went on in the well, it would be much more interesting than what goes on on the floor.

I thank the Chair and yield the floor.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I want to thank the floor managers, Senator DECONCINI and Senator SPECTER, for their courtesies to me in allowing me to go forward with those amendments and realizing the result and taking the time of the body to set a record on things I think we will have to address in the future days. I thank them very much.

And again I made my remarks about Senator CRANSTON earlier in the day and we must realize the extraordinary, extraordinary things he has done for veterans in a lifetime of political service, public service in the U.S. Senate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SIMPSON. 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. SIMPSON. I ask unanimous consent that I may proceed as if in morning business.

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

TRAGEDY AT CHEYENNE, WY, VA MEDICAL CENTER

Mr. SIMPSON. Mr. President, earlier in the day, as we discussed the veterans' bill, I did not go to a provincial matter. But I was informed of a tragic occurrence in the Cheyenne, WY, VA Medical Center. A veteran outpatient was found frozen to death on the grounds of the hospital last night.

My staff spoke with Deputy Secretary Principi this morning and he is conducting an investigation. I am told the veteran refused to be admitted to the hospital and then declined to follow the doctor's recommendations. I also am advised the doctor who had last seen the patient recommended to the patient that he be admitted to the hospital.

I do not know the position of the patient's family. They may have a different version. But we are shocked and saddened by that news. I have asked Deputy Secretary Principi and Secretary Derwinski for a full investigation into that matter. That is not a common occurrence in veterans' facilities but one that is always very troubling.

THE PRESIDENT'S DOMESTIC AGENDA

Mr. SIMPSON. Mr. President, I wanted to comment on the fine statement this morning of Senator DOLE. We are talking about the President, the foreign policy issues, the domestic agenda of the United States, and I hope all of our colleagues heard the remarks of Senator LUGAR and Senator BOREN this morning. These two fine Senators—and they are indeed—both spoke very clearly of the need to put aside this partisan posturing with regard to the Soviet Union and what we must do there. We have to respond in some way which is acceptable to the American public, and we must do that. I hope that we heed the language of Senator LUGAR and Senator BOREN this morning. I urge you to review that in the CONGRESSIONAL RECORD.

Also Senator DOLE was speaking of where we are as we find ourselves now in this gridlock.

And, what we are finding is that the ground has been carefully cultivated, the water has been chummed, as we used to say in an old fishing parlance, with the issue that somehow George Bush is not paying attention to the domestic needs of the United States. That is just simply not so.

And because of that, then the Armed Services Committee came up with a proposal to assist the Soviet Union, and that, then, gave the partisans on our side of the aisle the opportunity to say: Ha; in one breath you are saying the President is not paying attention to the domestic agenda, and on the other side, with the other breath, you are saying you want money for the Soviet Union—$1 or $2 billion.

We are going to have to do something for the Soviet Union. It is going to be in the form of credits in agriculture, which can be of assistance to Americans. It is going to be in the form of various procedures that will not be punitive, financially, to Americans. It can be something done so that we can get rid of surpluses; we can open new avenues of accord. That must be done.

So what Senators BOREN and LUGAR were saying is, let us put aside—I know it is exciting, and we are only a year from the election, but we do have a country to operate, and foreign relations and foreign policy to carry out, and a domestic agenda. It will not make it to say that George Bush has not turned his attention to the domestic agenda of the United States when a person has presented the Clean Air Act, which by good bipartisan support we passed here; The Americans With Disabilities Act, which we passed with good bipartisan support; a child care bill, which we passed with good bipartisan support last year; an education bill presented by the President; a highway bill presented by the President; a crime bill presented.

Those are things that have to do with the domestic agenda of the United States. We spent a great deal of time on these things.

So, as was said by our two colleagues, the Senator from Oklahoma [Mr. BOREN] and Senator LUGAR, we have to do something here with regard to the Soviet Union. It is no longer good enough to just simply play politics, and domestic versus foreign. The real issue is that people know the President of the United States. They see who he is. He has been through the fires. You are not going to bring up anything that is new or debilitating to him. He has been at the pinnacle and he has been at the depths of all of his years of public service. He has been through the fires, the annealing process, the fiery furnace.

It seems to me we should just get about our business, because sometime in the next summer the searchlight will fall on the singular candidate for Presidency in the other party. And they will scour the Earth, then, on that poor person, while the others have already been through the test.

So let us get on with the action. The majority leader has come to the floor, and I indicated at the time of my remarks that I would discontinue when he came forward. But I do think it is very important to listen to what Senators BOREN and LUGAR are telling us.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, as if in executive session, I ask unanimous consent that at such time as the Senate considers the nomination of William P. Barr to be Attorney General, there be 30 minutes of debate, equally divided between the chairman and ranking member of the Committee on the Judiciary; that following the using or yielding back of time, the Senate, without any intervening action, proceed to vote on the nomination; that the motion to reconsider be laid upon the table; that the President be notified of the Senate's action; and that the Senate return to legislative session.

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

Mr. MITCHELL. Mr. President, I have asked the staff to notify the chairman and ranking member of the committee. It is my intention to exercise my authority to proceed to this nomination, and thereby to begin the 30 minutes as soon as the chairman and ranking member arrive.

Therefore, Senators should expect that in slightly more than 30 minutes, if all the time is used, there will be a vote on this nomination. And we will be in session throughout the evening, as there are a number of other matters that we hope to proceed on this evening that will require rollcall votes.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, under a previous order, I have the authority to proceed to the nominations of Carol T. Crawford to be a member of the U.S. International Trade Commission. And then, immediately following that, to the nomination of Janet A. Nuzum to be a member of the U.S. International Trade Commission.

For the information of Senators involved in that, and there are several of them who have reserved time under the order, it is my intention to proceed to these nominations immediately following disposition of the Barr nomination. Therefore, Senators should be aware of that.

We will proceed now to the Barr nomination with a 30-minute time limit, and then we will proceed to the Crawford and Nuzum nominations, pursuant to the unanimous-consent agreement which is printed on the inside of the cover page of today's Executive Calendar.

Thereafter, it is my intention to continue on other business. I have discussed with the distinguished Republican leader further action which we hope to take this evening, and I hope to have an announcement in that regard shortly.

Mr. President, while awaiting the arrival of the distinguished chairman and ranking member of the Judiciary Committee to begin the proceedings on the Barr nomination, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

NOMINATION OF WILLIAM PELHAM BARR, OF VIRGINIA, TO BE ATTORNEY GENERAL

Mr. MITCHELL. Mr. President, under the authority previously vested in me, I ask that the Senate proceed to executive session and that the Chair lay before the Senate the nomination of William P. Barr, to be Attorney General.

The PRESIDING OFFICER. The clerk will report the nomination.

The assistant legislative clerk read the nomination of William Pelham Barr, of Virginia, to be Attorney General.

The Senate proceeded to consider the nomination.

The PRESIDING OFFICER. Under the previous order, the Senator from Delaware is allotted 15 minutes and the Senator from South Carolina is allotted 15 minutes as well. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, the Attorney General of the United States owes allegiance first and foremost to the Constitution and laws of this country, as we all know. This responsibility tempers his loyalty to the President that he or she may serve. The White House counsel answers to the President alone. The Attorney General does not answer to the President alone. He also answers to the public and to the institutions of Government as well.

Throughout his career of public service, William Barr has acted to protect and enhance the authority of the Executive. As Attorney General, however, Mr. Barr must distinguish the interest of the President from those of the public, and he must respect the separate though complementary powers of the three branches of Government. Based on my contacts with Mr. Barr, both before and during his testimony at the Judiciary Committee hearings on his nomination, I believe that Mr. Barr understands and is committed to the dual responsibility of the Office of Attorney General.

At the recent hearings on his nomination, I asked Mr. Barr about his view of the doctrine of separation of powers, and we discussed several areas where the exercise of power has caused tension between the executive and the legislative branches. We discussed, among other things, powers like the power to make war, the power of the Constitution divided between the executive and legislative branches. The responsibility and authority of each branch is distinct. Congress is to declare war; the President, as Commander in Chief, may then conduct war, but, although the roles are separate, the power is shared and each branch must act to take the country into war.

Mr. Barr agreed the Constitution assigns warmaking powers jointly to the Congress and the President. He acknowledged the President cannot initiate an offensive action and, even where the President has latitude to respond where lives are at stake or the vital interests of Americans are threatened, his authority is "provisional," because it is always subject to Congress' exercise of power. That is in the hearing record.

This testimony indicates to me that Mr. Barr recognizes the Congress and the President must be united in the decision to commit substantial forces to armed hostilities abroad, and it reveals he understands the separate but shared nature of the warmaking power.

Mr. Barr was similarly reassuring when asked about other issues of executive authority. For example, he admitted that as a matter of policy he would like to see the President have a line-item veto. Nonetheless, he continued, after carefully reviewing the issue he "found no basis for an inherent line-item veto in the Constitution."

On other questions of executive privilege, Mr. Barr said he believes Congress has "a legitimate interest in seeking information" and that "our policy should be one of maximum accommodation," referring to the policy of the Attorney General's office, the Justice Department. And he put this policy into practice, noting that he negotiated a compromise or accommodation on every request for information he handled while head of the Office of Legal Counsel.

He also said he expects and accepts the Supreme Court's decision on Morrison versus Olson and he would support a reauthorization of the independent counsel statute when it expires next year.

These specific examples give weight to Mr. Barr's testimony that "his loyalty is to the separation of powers and the system," and that his approach is to examine a claim of authority by "taking the politics out of it."

While there is ambiguity about what the Constitution envisions, Mr. Barr undoubtedly will continue to assert broad executive authority. I may disagree with his interpretation of executive power in certain of these instances, but Mr. Barr does not unreasonably seek to create ambiguity where none exists, and be expressed a commitment to defending the Constitution's division of power between the branches of Government even where he personally may desire that the powers were allocated differently.

In my view, this commitment to the public interest, above all else, is a critical attribute in an Attorney General, and I will vote to confirm Mr. Barr.

Two other subjects merit brief mention. First, Mr. Barr stated that he believed the Court's decision in Roe versus Wade is incorrect as a matter of constitutional interpretation and should be overruled. Such candor has, unfortunately, become quite rare on

the part of administration nominees. Again, I disagree with Mr. Barr's conclusion, but he has been nominated to a position in the executive branch, not the Federal judiciary, and in choosing members of the third independent branch of Government, the Senate need not defer to the President's selection of nominees who share his ideology. In contrast, the executive branch nominees will serve in the President's administration and must implement his policies. It is, therefore, appropriate, in my view, for the Senate to accommodate, within reason, the President's desire to have individuals who share his views confirmed for executive branch positions.

Finally, before I yield to my colleague from South Carolina, I want to comment on the subject on which Mr. Barr received the most questions during the hearing. That is the Justice Department's handling of the BCCI investigation.

As I stated at the hearing, I am concerned that the Department was too slow in appreciating the seriousness and the scope of BCCI's wrongdoing. According to Mr. Barr, the Department essentially assumed the role of a reactive one, responding to the worldwide showdown of BCCI in press reports of alleged wrongdoing, realizing the significance of the multiple pieces of the investigation only in the summer of 1991. This, in my view, is not acceptable and happened on the watch of the last Attorney General.

The Department of Justice and other Federal agencies must be in a position to size up the nature of a problem, to coordinate getting information to the appropriate agencies, and to act proactively before, not after, the illegality has spiraled into historic proportions.

But this is not the question before us today. We will face that question with the Attorney General in the months to come in seeking to determine how the Department can improve its operations to avoid future investigative failures under the new Attorney General.

Today the question is whether Mr. Barr should be confirmed to be Attorney General. I am aware of no evidence that suggests that Mr. Barr acted in a way to delay or obstruct the investigation of BCCI. While I am concerned the Department seemed to be asleep at the switch under Attorney General Thornburgh, Mr. Barr testified that he had no responsibility for BCCI prior to assuming the role of Acting Attorney General in August of 1991.

Since August, Mr. Barr has taken steps to ensure that the BCCI investigation is pursued aggressively. In fact, last Friday, the Justice Department announced an indictment of BCCI and three senior officials on conspiracy, wire fraud, and racketeering charges. At the same time, the Department's investigation is continuing in this country and abroad.

I told Mr. Barr at the hearings that the Judiciary Committee would remain attentive to the Department's handling of this investigation. And Mr. Barr, in a welcome change of previous Attorneys General in my view, agreed to work with the committee to keep it informed on the progress of the investigation.

For all the reasons I have mentioned today and one other, I will vote for Mr. Barr to be Attorney General for the United States. The other reason is Mr. Barr, I believe, in my working with him in the past, is one who wishes to accommodate a coequal branch of Government and assist it in its responsibility of oversight. I look forward to working with Mr. Barr. I plan on supporting him, and I anticipate and hope that he will be a fine Attorney General.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina is recognized for 15 minutes.

Mr. THURMOND: Mr. President, I rise today to voice my strong support for President Bush's nominee, Mr. William P. Barr, to be the Attorney General of the United States.

Mr. Barr has done an outstanding job in fulfilling the duties of Acting Attorney General since August of this year. The Attorney General is the chief law enforcement officer of the Federal Government, and has ultimate responsibility in regards to major civil litigation involving the United States. He also gives advice and provides legal opinions to the President on a wide range of issues. The Attorney General manages some 88,000 Justice Department employees nationwide and oversees all major components of the Department such as the FBI, DEA, INS, U.S. Marshals Service, Bureau of Prisons, and U.S. attorneys. The person entrusted with this important responsibility must perform the duties of this office in an independent and uncompromising manner.

Mr. President, Mr. Barr's recent confirmation hearing demonstrated that he is the appropriate individual to lead the Department of Justice. He is a man of character and integrity who throughout his career has shown courage, professionalism, and independence. Furthermore, Mr. Barr understands the important responsibility of this position, having served as an Assistant Attorney General, Deputy Attorney General, and more recently as the Acting Attorney General. His service in these positions has clearly illustrated that he will continue to ably perform upon confirmation. Mr. Barr has also demonstrated that he can make tough decisions under extreme pressure. It was this nominee who, as Acting Attorney General, directed a prison rescue in Talledega, AL, that freed nine hostages with no loss of life.

Mr. President, Mr. Barr possesses an exemplary background and has the hands-on experience necessary for this position. He received both his bachelor's and master's degrees from Columbia University. Mr. Barr earned a law degree from George Washington University Law School, graduating second in his class. During law school, he served in the intelligence section and the Office of Legislative Counsel at the Central Intelligence Agency. Following law school, Mr. Barr was a law clerk to the Hon. Malcolm Wilkey of the U.S. Court of Appeals for the District of Columbia Circuit. He has had practical experience as an associate and later as a partner with the Washington, DC, law firm of Shaw, Pittman, Potts and Trowbridge. Mr. Barr also served as Deputy Assistant Director for the Office of Policy Development in the Executive Office under President Reagan. In 1989, Mr. Barr was confirmed by this body as the Assistant Attorney General for the Office of Legal Counsel at the Department of Justice, and in 1990, the Senate confirmed him to be the Deputy Attorney General. He now serves as the Acting Attorney General.

Mr. President, Mr. Barr has a thorough understanding of our system of government. Throughout his 2 days of testimony before the Judiciary Committee, he demonstrated that he is intelligent, reasonable, and forthright. He clearly realizes the importance of the role of the Attorney General and the responsibilities that will be imposed upon him, once confirmed. I believe he will be ever mindful of the trust and confidence placed in him by the President and the people of our Nation as he carries out the duties of this esteemed office.

Mr. President, I strongly support Mr. Barr's confirmation to be the Attorney General of the United States and I urge my colleagues to vote in favor of his nomination to this important position.

I now yield such time as he may require to Senator HATCH.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I think the choice of William Barr as Attorney General is an excellent choice. He is a fine person. He is a terrific law-and-order person who I think will do a great job as Attorney General of the United States. I think he will be a less partisan Attorney General than some we have seen over the last 15 or 20 years, and who I think will keep in mind the important functions of the Justice Department and do them the way they should be done.

Mr. President, I have known William Barr for quite a while, and I have tremendous respect for him. I am pleased that the distinguished chairman and the distinguished ranking member are supporters of William Barr and want to see him have every opportunity to become the great leader that he has the potential of becoming and is already.

I intend to give him all the support from here that I possibly can, because

the responsibilities of the Attorney General of the United States are so important to this country that he deserves bipartisan support for his discharge of those functions.

Mr. President, in William Barr, President Bush has nominated a tough law-and-order public servant to be Attorney General. Just as important, Mr. Barr is firmly committed to equal opportunity under the law. He demonstrated that again 2 weeks ago when he initiated administratively a fair housing testing program at the Justice Department to combat housing discrimination. I was especially pleased to see the Department undertake this program as a response to legislation I have introduced in the last two Congresses.

At the same time, I am confident that Mr. Barr will be equally vigilant in opposing racial, ethnic, and gender preferences and reverse discrimination.

William Barr is not a member of President Bush's personal or political inner circle. He is not part of the President's political braintrust. He is not a politician or former politician who brings political clout to this position or carries political weight in 1 of the 50 States.

William Barr is just a lawyer's lawyer, that's all. President Bush's nomination of Mr. Barr is one more example that persons with talent and merit can and do rise to the top in our country. Talent, merit, and performance are the only reasons William Barr is Acting Attorney General and is before the Senate as nominee to be Attorney General.

I commend the President for this fine nomination. I congratulate the nominee for his sterling record.

After obtaining two degrees from Columbia University, William Barr went to work for the Central Intelligence Agency. He attended law school at night for 4 years and obtained his law degree from George Washington University. After clerking for Judge Malcolm Wilkey of the U.S. Court of Appeals for the District of Columbia, he became an associate at Shaw, Pittman, Potts & Trowbridge here in Washington.

For a year and a half in the first Reagan term, Mr. Barr served as Deputy Assistant Director of the Office of Policy Development. I pause here to marvel at his rise from a relatively obscure Federal position to his nomination 8 years later to the number one legal position in the executive branch. This rise is nothing short of phenomenal.

In between, Mr. Barr became a partner at his former law firm. He was tapped to become Assistant Attorney General for Legal Counsel in 1989. His performance there merited his promotion to Deputy Attorney General. His conduct in that office has continued to be impressive and now he is the President's nominee to be Attorney General.

Will he be tough enough when the situation calls for it? As Acting Attorney General, faced with an inmate uprising and hostage taking at a prison in Alabama, he exhibited sound judgment, courageous leadership, and took the tough action necessary when the chips were down.

I will close by quoting from an unlikely source. The New York Times editorial page had some kind words for Mr. Barr. Here is part of what an October 20, 1991, editorial said:

> William Barr * * * is an able and energetic lawyer who has already displayed strong loyalty to his client in the White House. In various high-ranking Justice Department jobs, he has boosted the administration's hardline crime legislation and endorsed its view of executive power.

Perhaps the New York Times viewed this latter comment as a criticism, but I regard it as a compliment.

The editorial continued, in part:

> As Acting Attorney General this summer, Mr. Barr made key decisions under pressure that led to the rescue of hostages in the uprising at the Talladega Prison in Alabama. He impressed Mr. Bush as much for not grandstanding as for firm leadership.
>
> Mr. Barr has also impressed many in Congress, even those who disagree with him, for this forthrightness. * * *

I look forward to Mr. Barr's early confirmation and to his tenure as the Nation's 77th Attorney General.

Mr. SPECTER. Mr. President, I am delighted to lend my voice in support of the nomination of William Barr to be Attorney General of the United States. I think his appointment is a very meritorious one. He is a career Justice Department official. He has had experience in Government working at the CIA while he went to law school locally in Washington, DC. He has served in the position of Assistant Attorney General. He has been Deputy Attorney General. He will now become, at the age of 41, Attorney General of the United States, if successful, and it certainly appears that he will be at this moment.

I have had considerable contact with Mr. Barr in his work so far in the Department of Justice. He is very responsive. We have worked on the issue of confirmation of judges and he has had a broad-based approach there. He is knowledgeable on legal theory. He is knowledgeable on the practice of law. He has had experience as a practitioner. He comes working his way through the Department, which will provide a level of professionalism which is very important.

There is no office in Government, Mr. President, more important than the Attorney General of the United States. He is a quasijudicial official, and the motto on the Department of Justice expresses the proposition well when it states that the Government wins its case when justice is done. I believe that Mr. Barr will be an excellent Attorney General in that tradition.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I know of no one on the Democratic side asking for a rollcall vote. I see no need for one. Obviously, we will accommodate one if anyone would like. But we are ready to vote whenever my colleagues are finished speaking to this issue.

Mr. DOLE. Mr. President, it is a pleasure to rise in support of Bill Barr's nomination as Attorney General.

In my view, President Bush is to be congratulated for nominating exactly the right person to lead the Department of Justice.

In this Autumn of confirmation battles, the 14 to 0 Judiciary Committee vote in support of confirmation is testimony to the universal acclaim given to this nomination.

Bill Barr is considered by everyone who knows him to be an outstanding attorney—a lawyer's lawyer.

Throughout his years with the CIA, in private practice, at the White House, and at the Justice Department, he has earned a reputation for intelligence and integrity.

Bill Barr will be an Attorney General who will hit the ground running.

He has done a superb job in serving as Acting Attorney General for the past 4 months, and in serving as Deputy Attorney General for over a year.

His courageous and clear-headed actions during this August's Talladega prison uprising is evidence of the type of leadership we can expect from him.

He will be an Attorney General who will aggressively lead the fight against crime and drugs.

Agents at the FBI and DEA, police officers at the State and local level, State attorney general, and local prosecutors all give him high marks for his professionalism and staunch support of their efforts.

Bill Barr has earned the President's confidence, he has earned America's confidence, and he has earned the support of the Senate.

I am hopeful we can move ahead with this nomination. I appreciate the spirit of cooperation from the managers. I hope we can avoid a rollcall vote. We have a number of other matters to take care of tonight. This will save us 15 to 30 minutes.

Mr. SIMPSON. Mr. President, I would like to speak in strong support of President Bush's nomination of William Barr to be Attorney General of the United States.

Mr. BARR has a distinguished career record. He received bachelors and masters degrees from Columbia University and a law degree from George Washington University. He worked as legislative counsel with the CIA and in the Domestic Policy Office in the White House. He was both an associate and a partner with a prominent Washington, DC law firm. In the Department of Jus-

tice, he was the Director of the Office of Legal Counsel, the Deputy Attorney General, and is now the Acting Attorney General.

Rarely is someone as young and nonpolitical as Bill Barr nominated for the position of Attorney General. I believe this indicates how confident the President is in Mr. Barr's intelligence, competence, fairness, and practical ability.

In recent nomination hearings, Mr. Barr clearly showed the Judiciary Committee that he is thoughtful, well read, a quick study, and willing to listen to all points of view on the crucial issues that challenge the Justice Department. I feel that he gave the entire committee reason to believe that he will be an excellent Attorney General.

I look forward to working with Mr. Barr, and I urge his confirmation.

Mr. HOLLINGS. Mr. President, I intend to vote with enthusiasm to confirm William P. Barr as Attorney General. He is the right man for the job at the right time.

Mr. Barr has a distinguished academic background and impressive experience in private practice as well as in public service. Most important, Bill Barr is a known quantity. He has done a truly outstanding job as Deputy Attorney General for the last year and a half, during which time he has worked with many of us in this body, earning our respect for his professionalism and competence. In the case of the uprising at Talladega Federal Prison in Alabama last summer, it was Bill Barr who managed the crisis and succeeded in quelling the disorder without loss of life.

Mr. President, I have forged an excellent working relationship with Deputy Attorney General Barr during the last year and a half, as I know many of my colleagues have. He is an outstanding manager, a fair and deliberate negotiator, and works to ensure comity between the Congress and the administration. I look forward to a good and productive partnership with him in the time ahead.

Mr. GRASSLEY. Mr. President, after hearing William Barr testify last week, I believe every Senator should vote to confirm him to serve as the Nation's Attorney General. Mr. Barr made clear with his candid testimony and direct responses to a wide variety of questions that he is a lawman, not a politician.

Make no mistake, Mr. Barr is a conservative and firmly committed to the President's program. His values are reflected in his actions. He is obviously a man with a strong sense of his duties and obligations—fidelity to the law, to the people, to the President, and to his family. It has taken him only a short time to convince all of us of the strength of his character and his personal integrity.

He has demonstrated that he is both a capable lawyer and a capable manager. He showed his qualities as a leader by earning the confidence of the entire Federal law enforcement community with his successful handling of the crisis at Talladega. His skills as counselor have been evidenced to members of the committee in his appearances before the body as head of the Office of Legal Counsel, Deputy Attorney General, and now Acting Attorney General. He doesn't give answers he thinks we want to hear. But, as President Eisenhower's Attorney General Herbert Brownell said, "an Attorney General doesn't do his job by trying to be popular." When we talk to our lawyer, we want straight answers and objective advice—the kind of answers the President, the Congress, and the people can expect from Attorney General Barr.

While we might not agree on every discrete issue of the day, I am confident that Mr. Barr will uphold his pledge to administer the law "evenhandedly and with integrity." Mr. Barr is a good lawman, who is concerned about the rights of the victims of crime as much as the rights of criminals. He understands that protecting the rights of Americans sometimes requires extending the long arm of the law beyond our borders. For this reason, we can count on him to be zealous in bringing to justice the Libyan intelligence officials he indicted last week for the bombing of Pan Am flight 103, and to make certain that foreign businesses operating in U.S. markets adhere to the principles of competition embodied in our antitrust laws. I know that he will also be vigilant in prosecuting white-collar criminals who defraud the Government and in addressing new criminal problems like the peddling of methamphetamines in the rural Midwest.

Attorney General Barr has made a strong impression on me in a short time as a first-rate law enforcement leader, and I will vote for his confirmation.

Mr. KOHL. Mr. President, I rise in support of the nomination of William Barr to be U.S. Attorney General. After listening to 2 days of testimony and after a thorough review of his record, I have concluded that he is qualified to serve as the country's chief law enforcement officer.

During the confirmation hearings, Mr. Barr displayed a degree of candor not often heard in these Halls. I agree with his support for the Brady Bill; I disagree with his opposition to Roe versus Wade; but more importantly, I admire and appreciate his honesty and integrity. Bill Barr's willingness to discuss the issues is a refreshing change in the confirmation process, and it would be wise of future nominees—both for the Justice Department and judgeships—to follow Mr. Barr's example.

Additionally, I am inclined to believe that Mr. Barr will do a good job of balancing potentially competing interests. I think he recognized the tension that could arise between his role as lawyer for the President and his role as the Attorney for the American people. If these two roles should ever conflict, Mr. Barr said his ultimate loyalties lie in following the law. I believe this is the appropriate position for the Attorney General to take.

Mr. Barr also impresses me as someone who is inclined to draw people in to the decisionmaking process and not isolate himself from career professionals at the Department of Justice, as his predecessor had done. Moreover, he has expressed a willingness to communicate and cooperate with the Congress. Even during the confirmation hearings, for example, he spoke without hesitation about the BCCI investigation, his appointment of a special investigator into Inslaw, and his opinions about executive prerogatives and powers. Again, he spoke openly of these things even when some of his opinions were unpopular.

Mr. President, my endorsement of Bill Barr is also based on the views that we share about how to reduce violent crime in America: We need better State, local, and Federal coordination; we need to attack violent crime at its very root, as opposed to merely treating its symptoms; we need to address criminal behavior as it permeates our workplaces, schools, and homes; most important, we need to take a more comprehensive approach to crime prevention by empowering our communities, educating our children, and reestablishing a strong family.

Too often around Washington, people seem less concerned about what is constitutionally sound and more concerned about what constitutes a good sound bite. I believe Bill Barr will reject that approach and will work toward goals and solutions—not mere political advantage.

That is why I am voting to confirm William Barr, Mr. President, and why I believe he will make a fine Attorney General.

Thank you, Mr. President.

Mr. THURMOND. Mr. President, Mr. Barr will make an excellent Attorney General. I think everybody is for him. To save time, I yield back the time and suggest we vote.

Mr. BIDEN. I yield back time and suggest we vote.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the nomination of William Barr to be the Attorney General of the United States.

So the nomination was confirmed.

Mr. THURMOND. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BIDEN. Mr. President, I assume we have a new Attorney General.

I congratulate him, and 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. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

NOMINATION OF CAROL T. CRAWFORD, OF VIRGINIA, TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION

Mr. PACKWOOD. Mr. President, I have been asked by the majority leader, who cannot come to the floor right now to commence the proceeding on the nomination for the International Trade Commission, Carol Crawford.

I ask unanimous consent that the Senate proceed to that nomination.

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

The legislative clerk read the nomination of Carol T. Crawford to be a member of the U.S. International Trade Commission.

Mr. PACKWOOD. Mr. President, I see the Senator from West Virginia is here now. The majority leader said to go ahead, and I thought I would make my opening statement.

The PRESIDING OFFICER. I remind the Senate that the 1 hour for debate on the nomination is to be divided as follows: 20 minutes for the Senator from West Virginia [Mr. ROCKEFELLER]; 18 minutes for the Senator from Oregon [Mr. PACKWOOD]; 10 minutes for the Senator from Michigan [Mr. RIEGLE]; 5 minutes for the Senator from Missouri [Mr. DANFORTH]; 5 minutes for the Senator from Kansas [Mr. DOLE]; and 2 minutes for the Senator from Pennsylvania [Mr. SPECTER].

Mr. PACKWOOD. I was advised that Senator BENTSEN may want to say something. It is my understanding that Senator RIEGLE might not be here, and it would require a unanimous consent to let Senator BENTSEN speak. I would not object if Senator BENTSEN wants to speak.

Mr. President, I will open with just a short statement about Carol Crawford, and then I will reserve the remainder of my time to respond to any argument that is made.

It is not very often in one's career that one can speak so forcefully, so lovingly, so gracefully of a person as I can speak of Carol Crawford, who I have known now for 23 years.

Carol is a native of New Jersey, was a graduate of Mount Holyoke College in 1965, with a bachelor of arts. She went to work 1 year later as a staff assistant to the President of the National Federation of Republican Women. And in 1967 she became a caseworker which, of course, in Congress is one of the entry level positions that many young people start. She became a caseworker for a Congressman from Nebraska named Bob Denney, a man who subsequently became a Federal district court judge.

When I was elected to the Senate in 1968, I came back shortly after the election to interview people for employment, and Carol was one of scores, or maybe hundreds, that interviewed with me. I hired her as my first legislative director. She was still quite a young woman and had not held this position in Congressman Denney's office long before she came with me. She was truly marvelous and extraordinary. There is no other way to describe her. I would have kept her on forever. One day, I would have made her my administrative assistant. She was, in every sense, as perfect an employee as you could hope for, whether it was dealing with constituents, the executive branch, or fellow employees. She was smart, gracious, and warm.

Then one day in 1975, she came to me and said she was leaving. I thought, oh, dear, what have I done? Why is she leaving? I was sure it must have been my fault, not hers. She said, no, that there comes a time to grow and move on. She said she was going to law school. She was then age 32, and she was going to law school, having been 10 years out of academics. She was admitted to American University and went full-time and graduated in 1978 magna cum laude.

She went to work for a short period of time for Collier, Shannon, Rill & Scott, one of the well-known law firms of the country but missed public service. She had 10 straight years of public service before she had taken off for law school.

So in 1981 she became the executive assistant to the Chairman of the Federal Trade Commission. It is a position that she held for 2 years. Bear in mind, She had no experience, particularly in my office, in matters of the Federal Trade Commission, such as antitrust or consumer protection. She went there as the personal assistant to the Chairman, and he, just as I, recognized her abilities very quickly. And in 1983 she was appointed Director of the Bureau of Consumer Protection in the Federal Trade Commission.

There are only three bureaus in the Federal Trade Commission, and the Bureau of Consumer Protection is one. Again, she has shone brightly, in that job.

In 1985 President Reagan asked her to move over to the Office of Management and Budget. There she became an Associate Director for Economics and Government in the Office of Management and Budget. She was responsible for the budgets in total of about $100 billion in all of the independent agencies, such as the Department of Transportation, and a variety of others. Again, Crawford did extraordinarily well in moving into areas that she had not dealt with before.

Again, this woman is quick and bright; she learns not only quickly, but she learns deeply. She did so well as Associate Director in the Office of Management and Budget that she was asked by President Bush in 1989, to become the Assistant Attorney General for Legislative Affairs.

She handled that job until she was nominated for the International Trade Commission 21 months ago. Twenty-one months, Mr. President. She has been kept waiting that long, through no fault of her own. There has been, and partially the fault of the administration, a foulup in the appointment of the Chairman of the International Trade Commission. There was not going to be one appointment made unless two appointees were made. After Crawford, it took a fair time to work out who the second appointment would be. The second one was selected and the nomination has gone forward. That is where we are now.

To the extent that one Senator can vouch to another about the capability, the decency, the honesty of a person, I can vouch for Carol Crawford. I can vouch for her family. I attended her wedding in 1970 and attended the 20th anniversary with many of the same people who had been at the wedding 20 years earlier. I know her husband well. I have been a guest in their house and they in mine.

This is the kind of person that you want in Government. This is a woman, who but for 5 years, the years in law school, and 2 years of law practice, has given all of her adult life to public service. So I would hope that this Senate would seize the opportunity to confirm her for a position on the International Trade Commission.

We will very seldom ever find her equal. I can assure the Senate we will not find anyone, for any position, at any time, that is better than she is.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I yield myself such time on the 20 minutes that I might need given under the unanimous-consent agreement.

Mr. President, I ask for the yeas and nays on this vote at this point.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. ROCKEFELLER. I thank the Chair.

Mr. President, this nomination will seem, to whomever is listening, like not a very large matter. But I can assure Senators that it is. Indeed, given the state of our economy, every nomination that affects jobs and competitiveness matters a lot.

Since the work of the International Trade Commission inevitably determines the fate of thousands of American jobs, the kind of person we place there clearly makes a difference. Ms. Crawford, unfortunately, does not have the experience, the knowledge, or the temperament necessary to make these judgments.

Fairness and objectivity is particularly important right now because of the increasingly sad state of our economy. A study by the Office of Technology Assessment, that several of us in the Finance Committee released last week, lays to rest any lingering doubts that America is sustaining its leadership position in the world trading system.

This situation that we are in, Mr. President, calls for major initiatives on the domestic front, but it also demands close attention to how well we can defend ourselves against foreign unfair trade practices that steal our jobs, steal our technology, and put our industry at risk.

We have good laws in this area, laws we are trying to defend against relentless attack in the Uruguay round, but they are complicated and they leave much to executive discretion. Therefore, it makes a great deal of difference who enforces these laws.

In that regard, Mr. President, I want to express my grave concern about the nomination of Carol Crawford, since I believe her to be unqualified to serve on the International Trade Commission. At the most basic level, the Senate's constitutional obligation to advise and consent to nominations gives us the responsibility of reviewing Presidential appointments carefully, and of raising objections when we believe they are warranted. But we also have a special responsibility in the midst of this current economic crisis to give extra scrutiny to nominees who will have the power to make the situation worse. This is such a case, in my judgment.

Ms. Crawford's nomination was approved by the Finance Committee last July by a vote of 12 to 7, the first divided vote on an ITC nominee that I recall, at least since I came to the Senate. Several of us, the Senator from South Dakota [Mr. DASCHLE], the Senator from Michigan [Mr. RIEGLE], and myself were among the dissenters and want to comment, either directly or indirectly, on our reasons for opposing Ms. Crawford.

I would like to begin that process by discussing the position to which she has been nominated, Ms. Crawford's record of experience and qualifications, and why a substantial number of committee members decided to oppose her.

The International Trade Commission rarely receives the public attention and scrutiny of, for example, the Supreme Court. Yet it is a critical agency for millions of Americans who hold jobs in import-impacted industries. While the Commission has a number of important responsibilities, its major one is to determine whether a domestic industry has in fact been injured because of imports in the various cases that come before it. That is a very complex matter.

Those cases usually involve allegations of unfair trade; dumping, for example, or government subsidies, which are decided by the Commerce Department. Our adherence to GATT rules, however, also obligates us to determine not only whether an unfair trade practice has occurred but also whether it caused injury. To make such judgments, the Commission functions as a quasi-judicial agency, conducting its own investigation, distributing questionnaires, holding hearings, and ultimately voting on each case on the question of injury.

In recognition of the importance of objectivity and neutrality in this process, the Commission by statute consists of six members, three from each party. The chairmanship is supposed to alternate between the two parties. The Commission, in addition, has adopted strict sunshine procedures to ensure the transparency and the integrity of its proceedings.

I make these points, Mr. President, to emphasize that the nature of the Commission's work requires someone with judicial temperament and objectivity, and someone with a good working knowledge of both economics and U.S. trade law, as the standards in question and their applications are very detailed and very technical.

This is both challenging and important work. Essentially the Commission has a major role in determining whether or not import relief is to be granted to American workers and American firms. Over a 9-year term literally millions of American jobs can hang in the balance of a particular commissioner's judgment. With respect to Ms. Crawford, I have two sets of concerns regarding her appointment to this position. They relate to what she has done and what she has not done.

Taking the latter first, what she has not done is accumulate any experience in, or knowledge of, trade law. She has admitted that she has no background in this field except for her work at the Federal Trade Commission where she emphasized the cost to consumers of enforcing the very laws that she would be charged with defending at the ITC.

Her tenure at the FTC was during its most ideological period when it regularly opposed affirmative decisions by the ITC.

This has led to charges that Ms. Crawford, if confirmed, would approach her task with ideological bias rather than with the judicial objectivity that the position calls for.

As evidence, some have cited the speech delivered in her name at an OECD conference in November 1984, which detailed the persistent effort of her agency, the Federal Trade Commission, to intervene in ITC proceedings on the side of the foreign producer and against the domestic industry.

As explained in the speech, the Federal Trade Commission consistently took sides against the American industry and went to some length to develop an economic analysis to backup its arguments.

Ms. Crawford has argued, in effect, that she cannot be an ideologue because she has no views on the subjects that she would be considering at the ITC.

She asks us to ignore her previous associations with some of the most ideological and biased members of the Reagan administration on trade issues, and she asks us to treat her as a clean slate.

I must say, Mr. President, that it is a novel approach, to claim ignorance as a defense against charges of bias. It seems to me, whether ignorant or biased, in either case Ms. Crawford is not qualified for the position.

Adding to what I believe is her obvious unpreparedness for this demanding technical position, is her record of employment with the Federal Government.

After her work at the FTC, Ms. Crawford was associate director of the Office of Management and Budget, OMB, responsible, among other things, for bank regulations at precisely the point when OMB was refusing to approve requests for additional bank examiners.

Indeed, Ms. Crawford is mentioned in testimony regarding this matter. In testimony before the Senate Banking Committee, the former head of the Home Loan Bank Board, Ed Gray, stated that Ms. Crawford was one of two OMB officials who rejected his request for additional funds for bank examiners, and it was the inadequate number of examiners which in fact contributed to the Government's failure to adequately supervise this country's savings and loan institutions.

Suffice it to say that I have some substantial doubt that Ms. Crawford has either the knowledge and experience, or the independence of the administration, necessary to perform the duties of this office properly.

What we have in this case, simply put, is an unqualified nominee. In my view, this seems to be a very unfortunate trend, a persistent lowering of standards, which I believe this body has a responsibility to fight.

The President is asking us over and over again to accept people who may have good Republican credentials, who have been laboring in the political vineyards for years—and all that is fine—but who clearly do not have the background or the experience to perform the important positions to which they are being nominated.

There is no better example of this than the International Trade Commission. Historically, the members have included Members of Congress, trade lawyers with years of experience, high-level public officials, and congressional staff who helped to write the laws that the Commission administers. Indeed, the nominee for the current Democratic vacancy fits into that latter category.

When it comes to Republican candidates, however, the President seems to follow a strategy based more on rewards for past service than on merit. In my view, the people deserve better than that, Mr. President, particularly the millions of Americans whose jobs will depend on how the Commission votes in future trade cases.

When people ask me what is wrong with the current nomination process, a very popular topic in light of the debate over Clarence Thomas, my response is that there is nothing wrong with it that competent nominees cannot cure quickly.

Unfortunately, Mr. President, Ms. Crawford is not in that category, in my judgment. And so reluctantly, and in full respect to the Senator from Oregon, I must ask Senators to join me in opposing her.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. I yield 2 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri has 5 minutes under the previous order.

The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, I wish I could agree with my friend from West Virginia about how delightful the confirmation process is in the U.S. Senate. I think this nomination is further evidence that something very wrong has come to the whole process. Carol Crawford's nomination was sent to the Senate on January 23 of this year. It is now, as of today, 3 days short of 10 months that this issue has come before the Senate. At last, we are ready to act.

The principal argument that is made against Carol Crawford is that she served as the Director of the Bureau of Consumer Affairs of the Federal Trade Commission, and therefore she is to be blamed for everything that happened at the FTC, whether in her Bureau or in one of the other two bureaus in which she did not serve.

She is blamed, for example, for a 1984 speech, an OECD speech, a speech which was not given by her, not written by her, and which by her account does not express views held by her. She is blamed for what was an ideological swing by the FTC under the directorship of Jim Miller. And there is no doubt about it, the FTC had as it Chairman a man named Michael Pertschuk. He served during the Carter administration. He was a very, very controversial, very bright, very interesting person—loves to fight, loves to scrap, loved controversy.

And when the Reagan administration came in, and when Jim Miller became the Chairman of the FTC, he also was a scrapper. And given the swing in ideology in the Commission, there was a lot of rhetoric that came out of the FTC at that time. But to blame the FTC generally and Carol Crawford specifically is misplaced blame.

I have visited with Carol Crawford in connection with this nomination and asked her in great detail whether she would bring to the Federal Trade Commission any particular ax to grind; whether she had some specific trade ideology that she wanted to further at the Commission.

She answered those questions in the negative, and said that her intention as a member of the ITC would be to apply the law, and to attempt to apply the law as Congress intended it to be applied.

Carol Crawford is a first-rate person. She is bright; she is able; she would be an excellent Commissioner of the International Trade Commission. I urge her confirmation by the Senate.

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, if I might respond to some of the arguments raised by my good friend from West Virginia. He talks about experts. The experts from the biggest CPA firms in this country—with hundreds of CPA's—cannot audit an S&L and tell us if it is bankrupt or not. There were experts who told us in 1965 what Medicare was going to cost, the best experts we had in Government, and they have been wrong ever since about the cost. There have been experts who told us that oil was going to go to $60 a barrel, and we passed a windfall profits tax and assumed we would collect $20 billion a year on it because it had gone from $3 to $12 to $30, and clearly, therefore, it was going to go up.

The best experts we had in this Government told us that. They were all wrong on all those scores. So do not give me this nonsense about experts. They can get us in as much trouble, probably more, because their presumed expertise is often not challenged.

I am telling you, when a woman that has graduated magna cum laude from law school can go from the Federal Trade Commission doing one kind of a job, to the Office of Management and Budget doing a totally different kind of a job, to the Attorney General's office doing a totally different kind of a job, and do them all well, that is better qualifications than all of the experts that you can roll in through this Senate Chamber.

But now I want to take issue specifically with one point—because this is the kind of thing that is going to cause good people to say: I do not want to be a part of this Government. That is the reference of the Senator from West Virginia to her speech at the OECD, the Organization for Economic Cooperation and Development in Europe.

What he said is untrue, and he knows it is untrue. And I deem it that way. If he wants to challenge it, he can. Carol Crawford was a pro forma delegate to the OECD Conference. It was a consumer protection conference, and she was the head of the Bureau of Consumer Protection in the Federal Trade Commission. She never went to the Conference. She never gave the speech. She never saw the speech.

I have a letter from the man who gave the speech. His name is James McCarty. He was career in the FTC, and he served from 1977 to 1979. He was the Associate Director of the FTC's Bureau of Competition. The Bureau of Competition are the ones that gave the speech. The paper was drafted within the Bureau of Competition, and Mr. McCarty gave the speech.

Carol never saw it; never wrote it; never delivered it. The reason her name was on it was because she was the delegate to the Conference as head of a Government agency, but she never went to the Conference.

Mr. President, I ask unanimous consent that the text of the letter be printed in the RECORD.

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

JAMES E. MCCARTY,
ATTORNEY AT LAW,
Denver, CO, June 26, 1991.

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

DEAR SENATOR PACKWOOD: I am writing to provide information that may assist the Senate Finance Committee in its hearings on the President's nomination of Carol T. Crawford to be a member of the International Trade Commission. This letter seeks to clarify certain issues posed in my recent phone conversation with Mr. Brian Waidmann, Special Assistant to the President for Legislative Affairs.

I am presently Senior Counsel—Antitrust for U S WEST Communications, Inc., in Denver, Colorado. However, from 1977 to 1989 I served on the staff of the Federal Trade Commission ("FTC").

I understand from my conversation with Mr. Waidmann that the Committee is interested in a paper presented in Ms. Crawford's name to the Organization for Economic Cooperation and Development ("OECD") in Paris in November of 1984. Because I actually presented the paper on the Federal Trade Commission's behalf in Paris at the OECD session, I may be able to provide you and the Committee with helpful information regarding the paper.

In the Fall of 1984, a Consumer Committee within the OECD was preparing a consumer-oriented program dealing with international trade issues. The OECD invited an FTC representative to explain the agency's "Com-

petition Advocacy" Program. Under that Program, the FTC has, for a number of years, submitted filings to various Federal and State agencies urging that competitive effects be considered in regulatory decision-making. Of relevance here, the FTC had submitted a number of such filings to the International Trade Commission ("ITC"). As I recall, the OECD was interested in the FTC's approach and had invited an agency representative to explain this FTC involvement in ITC proceedings.

To the best of my recollection, Ms. Crawford was invited to be the FTC's delegate purely for protocol reasons: the OECD session involved a consumer committee, and at that time Ms. Crawford was the FTC's senior manager with responsibilities for consumer protection matters. Ms. Crawford was unable to attend the OECD session, and I was asked to present the FTC's paper in her stead. At the time, I was Associate Director of the FTC's Bureau of Competition.

As I recall, Ms. Crawford had little, and probably no involvement in preparing the FTC's presentation to OECD. A written paper summarizing the FTC's Competition Advocacy Program (including its filings before the ITC) was drafted by attorneys within the agency's Bureau of Competition. The FTC's Bureau of Economics likely provided input to the paper as well. Within the FTC, those were the two divisions with principal responsibility for Competition Advocacy filings that involved international trade issues.

As a procedural matter, I believe that all three FTC Bureaus—Competition, Economics, and Consumer Protection—routinely were asked to sign off on all FTC filings made with other governmental agencies. This would include the paper presented to the OECD. In addition, a majority of the five Commissioners of the FTC also authorized all such filings. As a practical matter, however, both the Commissioners and Bureau directors usually gave considerable deference to the expertise of the Bureau (or Bureaus) that actually prepared a given Competition Advocacy filing. In the case of an ITC or OECD filing concerning international trade, for example, the Bureau of Consumer Protection Director historically would defer to the views of the Directors of the Competition and Economics Bureaus.

To the best of my recollection, this procedure was followed in preparing the FTC's 1984 paper to the OECD. As indicated, the paper was drafted within the Bureau of Competition. The only discussions I recall having concerning the paper were with Bureau of Competition staff. I do not recall ever having discussed the paper's contents with Ms. Crawford, but I believe her name may have appeared on the paper as submitted. Again, I believe that was for protocol reasons—she had been the representative officially invited by OECD.

Pursuant to the Federal Trade Commission's authorization, I presented the FTC's paper to the OECD session in Paris in November 1984. As I recall, the paper was submitted with the standard "boilerplate" FTC disclaimer on the cover. That disclaimer indicated that the paper reflected the views of the author. In retrospect, the appearance of Ms. Crawford's name on the paper was imprecise—particularly in connection with the boilerplate disclaimer. This is because the paper actually was authored by the Bureaus of Competition (and perhaps Economics), not by Ms. Crawford or her staff in the Bureau of Consumer Protection. Further, I presented the paper as the views of the FTC as an agency, not on behalf of Ms. Crawford or her Bureau of Consumer Protection.

I hope this information is useful to you and the Committee. Please do not hesitate to have your staff contact me at (303) 896-2200 if I can be of any further assistance.

Sincerely,

JAMES E. MCCARTY.

Mr. PACKWOOD. Mr. President, is that the kind of slander and libel and defamation we have to put up with in this Chamber? You can't accuse somebody of giving a speech they never saw, never wrote, at a conference they never went to. It is no wonder good people do not want to serve.

Then we have Mr. Edwin Gray, of the Federal Home Loan Bank Board, complaining that Carol would not give him any examiners and that is why we had the S&L crisis. In essence, that is the argument. Let us get it straight. To begin with, Carol did not go to the Office of Management and Budget until 1985. So anything that they might have done before she got there she is not responsible for.

Throughout Crawford's tenure at OMB, Mr. Gray had never hired enough examiners to reach the ceiling that he was allowed. The Office of Management and Budget sets a ceiling as to how many people you can hire. And if OMB determines you can have 500 bank examiners and you hire 400, it is not OMB's fault that you did not hire 500.

But, again that is neither here nor there, because when Carol Crawford testified before the Senate Banking Committee, she was asked specifically about Mr. Gray's assertion that she had specifically kept him from getting the number of bank examiners that he needed. This was her answer, under oath in the Senate Banking Committee:

Soon after I went to OMB, Mr. Gray came to visit me. He said he would be needing additional staff resources. I made the decision instantly that he needed every additional bit of staffing resources that we could give him. I told him, literally, that he had carte blanche.

Bear in mind, this was at a time when he had not even hired as many people as he was authorized to hire anyway.

So, if we are going to talk about expertise, I will put this woman up against any expert you can name, and she will be right more often than they are. If you want to talk about judgment, this woman has more judgment in her little finger than most of us will ever have. Do you want to talk about experience? We have no lawyers on the ITC except for these two women who are being nominated now. If this is a complicated legal area, they ought to be happy to get two lawyers. They have nobody who had any previous trade experience except perhaps for Commissioner Rohr and Brunsdale.

But this woman is qualified beyond belief. And to attempt to smear her reputation and accuse her of saying things she never said at conferences she never went to, or giving speeches that she never saw or wrote, is beneath the dignity of this Senate. And I hope, if for no other reason than for those kind of charges, false charges—knowing false charges—that she would be confirmed overwhelmingly.

I thank the Chair.

The PRESIDING OFFICER. Who yields time? The Senator from West Virginia.

Mr. ROCKEFELLER. How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator from West Virginia has 8 minutes and 30 seconds.

Mr. ROCKEFELLER. Does the Senator from Michigan, who is currently on the floor, wish to speak?

Mr. RIEGLE. Mr. President, I rise to oppose this nomination. Ms. Crawford has the following strikes against her:

First, she admits she has no background in trade law except for her work as a Federal Trade Commission staffer responsible for the FTC's work in dramatizing the cost to consumers of, that is, opposing, actions under U.S. unfair trade laws. These are the same laws she would have to administer at the ITC.

Second, she was at the Federal Trade Commission during its most ideological period in the Reagan administration. That deregulatory philosophy is fundamentally at odds with the culture of an independent regulatory agency like the International Trade Commission, which is supposed to administer trade law; that is, to regulate unfair trade practices.

Third, she was associate director of OMB responsible for banking regulation at a time when OMB was resisting higher funding for bank regulators. Former Federal Home Loan Bank Board Chairman Ed Gray singled out her and Constance Horner for blockings requests for higher funding.

Most nominees with limited relevant experience to the post in question can be given the benefit of the doubt. But I believe that Ms. Crawford does not merit the benefit of the doubt in view of these three strikes against her.

The International Trade Commission has two basic jobs:

First, it determines whether the domestic industry has been injured in a dumping or subsidy case. If the ITC does not find injury, then the industry will normally not qualify for relief; and

Second, it decides counterfeiting and trademark fraud cases and imposes restrictions on these types of unfair imports.

This is not a job for someone with a strong ideological or philosophical bent; this is a job for someone willing to simply administer the laws which Congress wrote, irrespective of their own philosophical beliefs about trade policy.

If the unfair trade laws are not administered impartially and faithfully—if they do not work—then our constitu-

ents have no choice but to ask Congress for help. The unfair trade laws are there to insulate Congress from scores of requests by individual companies and industries for trade legislation.

That is why it is important to put qualified people without a philosophical agenda on the International Trade Commission. That is why I oppose this nomination.

Mr. ROCKEFELLER. Mr. President, I have nothing but the greatest respect for the loyalty that the Senator from Oregon feels towards Ms. Crawford, and I would expect no less of him. And, indeed, were any of the very fine people that work with me wanting to go to a position, indeed, were nominated for a position, I would do no less. And I admire him very much for that. But I do not think that is entirely our point here.

The fact of the matter is that the International Trade Commission is just an extraordinarily complicated subject. The Senator from Oregon makes fun of experts, and he did that, I thought, rather well, rather cleverly. But underneath the concept of an expert—at least I hope the Senator would grant me this—goes a certain integrity that goes along with knowledge, knowing something about the subject. I think the Senator from Oregon would agree that if, for example, you are going to have some position that relates to the Health Care Finance Administration, your judgment may not be excellent, but knowing something about the resource base, relative value scale, or asymmetrical transitions, or behavioral offsets becomes very important, and that having a body of knowledge, if it is to be in health care, is very important. And, indeed, if one is going to be working in international trade matters, one is going to be dealing with equally complex questions such as those of the steel industry on other key sections of our company.

This Senator can remember, when he was a Governor, going before the International Trade Commission and presenting a case on behalf of a steel company from this Senator's State of West Virginia. And literally the balance of the jobs in the steel industry rested upon the decision of the members of the International Trade Commission, whether they felt that injury had been laid upon the industry. And indeed it had been.

Knowing what goes on in international trade; knowing what is involved with agriculture; knowing how it is that businesses in other countries do business—people talk about the keiretsu business in Japan. There is a very special way they do business in Japan. It is not the same as ours. They are very good at disguising what they do. They do not operate in what we would call a transparent, open manner. Knowing something about that country, or knowing something about the European Community and how its member states conduct trade with respect to agriculture, for example, how it is they put on trade barriers, are they literal trade barriers, are they nontransparent? Are they not? It is extremely complicated and it demands a certain level of expertise.

I am not suggesting that experts cannot make mistakes. Indeed they do, but they make their mistakes, when they do, at least from a body of knowledge.

Here we have a woman who has admitted that she has no views on this subject. She has no views. That is very disconcerting to me. How does somebody go into something as important as the International Trade Commission, when an enormous amount of our gross national product is involved with international trade, and she says she has no views? I am not saying she is not a very bright person, a very loyal person, a very wonderful person. But knowing something about international trade, if you are going to be on the International Trade Commission, is a matter of some importance.

She does not know about trade. She admits to not knowing about trade. We are not talking about business sending our products out of the country. We are talking only about countries who send their products into our country and who sometimes willfully do damage. That is what the International Trade Commission is meant to decide: Has injury been established?

For that, you may not have to be an expert but you surely have to have a body of knowledge, which can only come from experience. She has admitted she does not have this body of knowledge. And it absolutely defies me as to why one would eagerly go and vote for this person.

She was approved in the Finance Committee, but it was with seven votes against her. It was, in the way the Finance Committee works, a very close vote. People had substantial differences with respect to their trust in her.

The Senator from Oregon, who is my good friend and always will be, refers to the 1984 speech that Carol Crawford said she did not give. I have no argument with that. I, in fact, never said that she said she did give it. But here her name is on it. And then there is this very odd disclaimer at the bottom. And whether she gave it or not, she never ever in the years afterwards either corrected the document or admitted anything of her thinking on trade issues and whether it was anywhere different. She could have commented on it. I did not make a Federal case out of it, but it just strikes me as a pattern of inconsistency, with a person who evidently just does not have very much of a body of knowledge.

So it would be for that reason and that reason alone—that this woman has no views on international trade, something which the International Trade Commission deals with exclusively—that I would oppose for nomination.

I reserve the remainder of my time.

Mr. PACKWOOD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Oregon has remaining 5 minutes and 44 seconds, the Senator from West Virginia has remaining 2½ minutes.

Mr. PACKWOOD. I will again refer to the OECD speech. The Senator from West Virginia says she has not denounced it. First, she never knew her name was on it. The name appears as a matter of pro forma, because she was the delegate.

Now years go by. This is a 1984 speech. She never knew it was given. She never knew what was in it. She never saw it and no one ever asked her about it. And then suddenly, 7 years later somebody says, "What about that speech you gave in 1984 in Paris?" And she said, "What speech?" She has argued that the views in that speech are not hers, and she was blindsided, as we all are so often.

I wonder how many times we are asked, "How could you have written a letter like that?" Because 400 or 500 letters a day go out of your office over your signature and you do not see every one. And one day, one goes out that does not represent your views, unintentionally, and you are stuck with it.

Mr. President, I will come back again to an important point. I hope that we are not starting down the path where we are going to be governed by experts, because I know what happens: They tune out everybody that is not expert in their field and when they make a mistake it is a big one.

I would rather have somebody with intelligence, judgment, balance and a breadth of experience on the commission. Someone who has proven that she can move from the personal assistant to the Chairman of the Federal Trade Commission, to the head of the Bureau of Consumer Protection, to the Office of Management and Budget where she oversaw the Department of Transportation and other agencies, totaling about $1 billion in budget, and then on to the Attorney General's Office.

If that is not a variety of experience, if that is not proof you can handle the job given to you, then there will never be enough proof.

I will say, again, Mr. President, this woman is qualified beyond belief. She has given her life to public service in this country, and we will be lucky if we confirm her for the position on the International Trade Commission.

I reserve the remainder of my time.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER (Mr. BRYAN.) The Senator from West Virginia.

Mr. ROCKEFELLER. In view of the fact that the Senator from Michigan is not going to be speaking and 10 minutes has been allotted to him, does the 10 minutes that is allotted to him go to the opposition?

The PRESIDING OFFICER. Under the previous order, the order agreed to, time unused goes to the chairman and the ranking member of the Finance Committee.

Mr. ROCKEFELLER. Might I ask of the Chair if I am a manager on this side, so to speak, would the 10 minutes go to me?

The PRESIDING OFFICER. Under the order, it would not go to the managers, but under the order it went to the chairman and the ranking member of the Finance Committee. That would, therefore, in the Chair's understanding, mean that the 10 minutes of Senator RIEGLE would go to the chairman of the Finance Committee. Senator BENTSEN could yield that time.

Mr. ROCKEFELLER. The Presiding Officer has made himself clear.

Mr. President, my friend from Oregon is talking about one of our International Trade Commission members, Mr. Seeley Lodwick. I would have to say I take some satisfaction, as I look at his résumé, in that he has been an Under Secretary of Agriculture for International Affairs and Commodity Programs. He is far from simply "a farmer."

It occurs to this Senator, the International Trade Commissioners are dealing with section 201 which has to do with injury, dealing with dumping and countervailing duty laws; they are dealing with section 337 which has to do with patent infringement and other matters, extraordinarily complex.

I understand the desire of the Senator from Oregon to have this confirmation successful for somebody who has worked for him. But I would point out to my colleagues that 17 percent of our gross national product, Mr. President, is in fact involved with international trade. I would point out that for every $1 billion of exports, there are 23,000 jobs involved.

In this case, we are talking about imports which have the reverse effect on jobs. Indeed, that is why industries go to the Commission—to halt injury and job loss. If foolish judgments are made by the International Trade Commission, we all suffer.

We will have a $65 billion trade deficit this year, Mr. President. That is an enormous burden to the economy of this country. It is an enormous burden to the people of my State. When the coal miners of southern West Virginia are thrown out of work because of dumping practices that relate to the steel industry, that is not only felt in the steel industry, that is felt in the coal industry.

People do get thrown out of work, Mr. President, because of import injury. That is what the International Trade Commission decides. Carol Crawford says that she has no views on these matters. I consider that wholly insufficient as a criteria for nomination and certainly for confirmation, and I oppose her confirmation and reserve the remainder of my time.

Mr. PACKWOOD. Mr. President, I have no objection to the distinguished Senator from West Virginia using—Senator BENTSEN indicated he has no objection—to his using his time.

Mr. ROCKEFELLER. This Senator has no further use for the time, if the Senator wishes to make a closing statement on behalf of Ms. Crawford.

Mr. PACKWOOD. Senator SPECTER is coming. Senator SPECTER wants to speak for 2 minutes.

Mr. ROCKEFELLER. I reserve the remainder of my time.

Mr. PACKWOOD. Mr. President, I would like to read one more thing. The Senator from West Virginia said he is surprised Ms. Crawford had not renounced this speech in 1984. I will read from the hearings before the Finance Committee in which she said:

> I was stunned to learn for the first time only 6 weeks ago that a paper was presented in my name in 1984 that expressed views concerning trade policy that are not and never have been my views. It is my understanding that this paper has been circulated to members of this committee.
>
> Trade laws on the matters dealt with in the paper are very clear. I was shocked to read the substance of the paper, and appalled moreover to hear that some have understood it to reflect my views.
>
> Let me say to each and every member of this committee the paper, most emphatically, does not reflect my views. I strongly disagree with the substance of the paper, now that I have read it. It presents an interpretation of the laws administered by the ITC that I believe is incorrect. In fact, I don't even believe the interpretation is permitted under the terms of the statute. I welcome, therefore, this opportunity to correct the record.

And so at least to the extent my good friend from West Virginia says she has no views, she certainly has views that are in opposition to the OECD paper that was presented in Paris in 1984.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER] is recognized, and has 2 minutes in his own right under the previous order.

Mr. SPECTER. I thank the Chair.

Mr. President, I am pleased to lend my views in support of the nomination of Carol Crawford to be a member of the International Trade Commission. I have known Miss Crawford from her work as an assistant attorney general for legislative Affairs and have been very much impressed with her capability and her professionalism, so that when I heard her nomination would be on the floor I wanted to come over and state the contacts I have had with her and my views of her competence for this importance position.

In noting her résumé, I see that she is magna cum laude from law school at American University, which is not easy to obtain, and that she has been a public servant for some 18 years; she has had some very difficult assignments, such as being legislative director to Senator BOB PACKWOOD. Having that kind of an assignment, I would say that she has had a good indoctrination as to what happens on Capitol Hill.

I had not known until I reviewed the résumé that she had worked as a legislative director for Senator PACKWOOD, but in the work that I had with her when she was Assistant Attorney General for the Department of Justice, brought nominees over and had a fair amount of contact on matters where the Judiciary Committee interfaced with the Department of Justice, I can see her sensitivity for Capitol Hill relations.

I note that she has been the Director of the Bureau of Consumer Protection of the Federal Trade Commission. She has been Associate Director of the Office of Management and Budget. She is very much a professional.

The International Trade Commission is a very important Commission. It certainly impacts with great importance on trade policy for the United States and has been very important to my own State of Pennsylvania.

Based on the experience I have had with her, and the résumé I see, I believe she is well qualified for the International Trade Commission, and I urge my colleagues to support her.

I yield the floor.

Mr. DASCHLE. Mr. President, again the Senate is confronted with a nominee who is not qualified for the position. Carol Crawford is not qualified to serve as a member of the International Trade Commission, and I fear that her confirmation could undermine the enforcement of our effort to ensure fair trade. The result will be higher trade deficits and the further weakening of our industrial and agricultural base. For these reasons, I urge the Senate to reject this nomination.

We must send a message to the administration that we will not accept nominees who lack the experience, knowledge, training, and education to perform the jobs for which they are nominated. We also must not allow officials who are not committed to the enforcement of our trade laws to undermine these laws and jeapordize our economy.

The International Trade Commission plays a critical role in our economic policy. The ITC assures American producers a level playing field. Thousands of businesses and millions of jobs depend on this agency to enforce the laws designed to protect against unfair trade. It offers a forum where American producers' grievances will be heard and addressed. By enforcing U.S. trade law, the ITC promotes freer and

fairer trade by encouraging other countries to give up their unfair practices and trade fairly. A role of such importance should not be entrusted to persons who are not qualified for, or committed to, the assignment.

Ms. Crawford lacks any experience in and knowledge of trade laws. This is a fact that she admits. Her only exposure to this field was during her service at the Federal Trade Commission, in which she sought to defeat the purpose of the laws she now would be responsible for enforcing. During her tenure, the FTC opposed affirmative decisions by the ITC on behalf of American producers injured by unfair trade. Her name is on a 1984 speech detailing the FTC's efforts to take sides with foreign interests against American producers in ITC actions.

Ms. Crawford says now she never delivered or approved the speech, and lacks the knowledge to form a strong philosophy concerning the enforcement of U.S. trade law. Whether or not she delivered the speech, it portrays an FTC that during her tenure was hostile to the ITC's enforcement of U.S. law against unfair trade. Her service in the agency in that period raises serious questions concerning her commitment to enforcement of U.S. trade law.

By using her ignorance of trade law to avoid tough questions concerning her philosophy, Ms. Crawford fits a disturbing and familiar pattern of Bush administration nominees. This maneuver, which is designed to circumvent the Senate's constitutional responsibility for advice and consent, must not be tolerated.

Beyond the questions concerning her qualifications and commitments are questions raised by Ms. Crawford's record in other government positions. I am not permitted under the unanimous consent agreement to discuss some of these issues. I will say only that these questions further undermine my confidence in Ms. Crawford's fitness for a position as important as a member of the International Trade Commission.

In summary, Mr. President, U.S. trade law is too important to our economy and the personal well-being of millions of Americans to be enforced by novices who are learning on the job. Ms. Crawford lacks the experience and knowledge to perform this important responsibility. Various episodes in her background also raise questions concerning her commitment to the enforcement of U.S. trade law and her conduct in office. For these reasons, I urge that the Senate reject her nomination to the ITC.

Mr. SANFORD. Mr. President, I rise to join a number of my colleagues from the Finance Committee in opposing the nomination of Carol Crawford to be a member of the International Trade Commission.

I do so because I am deeply troubled by the trade deficit our country faces and the harm that those deficits have caused to our domestic industry and American workers. I also am concerned that Ms. Crawford lacks the needed expertise and background in trade law.

Indeed, Ms. Crawford admitted during her confirmation hearing that she has no background in trade law. At a time when our Nation is being flooded with imports, when too many workers are watching their jobs get traded away and domestic companies complain that relief from unfairly traded imports is extremely hard to come by, I think we must have an International Trade Commission that fully understands our trade laws and the need to rigorously enforce them. I do not believe that Ms. Crawford has demonstrated that she has that expertise. I think the workers of North Carolina are entitled to know that their jobs will be protected from cheap imports made with subsidies abroad or from products that are dumped in our market. I simply do not think Ms. Crawford is qualified to take on those responsibilities as a member of the International Trade Commission.

Mr. HATCH. Mr. President, Carol Crawford is a friend of mine. She and her husband are fine people and both believe in giving back to our Government and the people.

I knew Carol before she served at Justice. Her tenure at Justice was a difficult one but she conducted herself with intelligence, dignity, fairness, and compassion. She did well and I was proud of her.

She will do a good job in this position and I strongly support her. I hope our colleagues will support this nominee. You will not be sorry.

Mr. SIMPSON. Mr. President, I would wish to add my voice to the chorus of accolades being extended today to Carol Crawford on her confirmation by the Senate as an ITC Commissioner. She will swiftly and clearly demonstrate that our confidence in her is not misplaced. I am very confident she will thoughtfully and judiciously apply the laws entrusted to the International Trade Commission in order to responsibly provide fair and effective remedies to U.S. industries that are affected by foreign imports.

It has been my sincere personal pleasure to have known Carol Crawford and her husband Ron since my first days in this body, nearly 13 years ago. I have observed her career—careful observing her rise through the ranks of this city of Washington—from her days at Congressional Quarterly to her time as a staff researcher in the House of Respresentatives and then to the Senate, where she served our colleague BOB PACKWOOD with true distinction and total loyalty for more than six years. She then polished up her legal talents in two Washington firms before joining the Federal Trade Commission, the Office of Management and Budget and the Department of Justice. In each case, Carol demonstrated ability, dedication, a team spirit, and an outstanding sense of duty.

Carol Crawford is surely the right person in the right place at the right time. The ITC will benefit, and therefore our Nation will benefit, from the independent thought and inner strength she will bring to the job. In Washington, many people "talk the talk." Carol Crawford "walks the walk." She gets things done. At a time when we, as a nation, can ill-afford to become protectionist, Carol brings the free trade attitude to a world so prone to isolationism. She is goal-oriented, balanced, and fair. She is a woman of uncommon common sense. These traits have brought her to this new challenge, and will continue to serve her well. And we will all benefit greatly from it.

Over the years, my wife Ann and I have greatly enjoyed our times with Carol and Ron Crawford. They are individuals of enormous substance, wit, and charm—and they top it all off with a delightful sense of humor.

Mr. President, I am so very pleased by today's vote to confirm Carol Crawford as our newest ITC Commissioner. She will make us very proud.

The PRESIDING OFFICER. Who seeks recognition?

Mr. PACKWOOD. I am prepared to yield back the time if the Senator is.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, let me just close briefly and then I will be glad to yield back whatever time is remaining.

I think we are talking about standards, and I think we are talking about independence. The International Trade Commission is a quasi-judicial body. It requires independent judgment. It calls for it.

Carol Crawford is undoubtedly a very bright and a very able person. When she worked for OMB, she worked for perhaps the most political and most ideological agency and director that we have seen in a long time. You cannot mix politics and ideology and the International Trade Commission together without doing serious damage.

It seems to me that the nominating process and confirming process is extraordinarily important. We have gotten into a habit in this body of saying yes too often. I bear no grudge to Carol Crawford and wish her well in life but not on the International Trade Commission. I do not believe she has—indeed, she feels she does not have—any views on international trade. That kind of information is important.

I am not at all convinced that she would be independent. In fact, I am persuaded she would likely do the bidding of the administration. I find that offensive. I find that not up to the standards to which the Senate ought to reach.

I would, therefore, urge my colleagues to vote against her confirmation because of the need for independence and knowledge on something so incredibly important for jobs in this country as the International Trade Commission.

I thank the Presiding Officer, and I yield the remainder of my time. I thank my good friend from Oregon.

Mr. PACKWOOD. I thank my good friend from West Virginia, and Senator DOLE has indicated he is prepared to yield back his time also.

The PRESIDING OFFICER. The Chair informs Members of the Senate that it is the Chair's understanding Senator RIEGLE still has 10 minutes which has been delegated to the chairman of the Finance Committee. Senator DOLE has 5 minutes, which I understand has been yielded back.

Mr. PACKWOOD. I was under the impression that Senator RIEGLE was not going to talk, and that the Senator from West Virginia was using his time, that when he was done that was going to be yielded back also.

Mr. ROCKEFELLER. The Senator from Oregon is entirely correct.

The PRESIDING OFFICER. Without objection then the Chair understands that all time heretofore set aside for purposes of the debate on the nomination of Carol Crawford as allocated under a previous order is yielded back.

The question is, Will the Senate advise and consent to the nomination of Carol T. Crawford, of Virginia, to be a member of the U.S. International Trade Commission. On this question the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Montana [Mr. BAUCUS], the Senator from New Jersey [Mr. BRADLEY], the Senator from North Dakota [Mr. CONRAD], the Senator from California [Mr. CRANSTON], the Senator from Ohio [Mr. GLENN], the Senator from Iowa [Mr. HARKIN], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

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

The result was announced—yeas 59, nays 33, as follows:

[Rollcall Vote No. 260 Ex.]

YEAS—59

Akaka	Dole	Kasten
Bond	Domenici	Kohl
Breaux	Durenberger	Lieberman
Brown	Garn	Lott
Bryan	Gorton	Lugar
Burns	Gramm	Mack
Chafee	Grassley	McCain
Coats	Hatch	McConnell
Cochran	Hatfield	Moynihan
Cohen	Heflin	Murkowski
Craig	Helms	Nickles
D'Amato	Inouye	Packwood
Danforth	Jeffords	Pell
DeConcini	Johnston	Pressler
Dixon	Kassebaum	Reid
Robb	Simpson	Thurmond
Roth	Smith	Wallop
Rudman	Specter	Warner
Seymour	Stevens	Wirth
Shelby	Symms	

NAYS—33

Adams	Ford	Mitchell
Bentsen	Fowler	Nunn
Biden	Gore	Pryor
Bingaman	Graham	Riegle
Boren	Hollings	Rockefeller
Bumpers	Kerry	Sanford
Burdick	Lautenberg	Sarbanes
Byrd	Leahy	Sasser
Daschle	Levin	Simon
Dodd	Metzenbaum	Wellstone
Exon	Mikulski	Wofford

NOT VOTING—8

Baucus	Cranston	Kennedy
Bradley	Glenn	Kerrey
Conrad	Harkin	

So the nomination was confirmed.

NOMINATION OF JANET A. NUZUM OF VIRGINIA TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION

The PRESIDING OFFICER. Under the previous order, the nomination of Carol T. Crawford having been confirmed, the Senate will now proceed to the consideration of the nomination of Janet A. Nuzum, of Virginia, to be a member of the U.S. International Trade Commission.

Further, under the previous order, the nomination is deemed confirmed without debate; that the motion to reconsider be tabled; that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The nomination considered and confirmed is as follows:

Janet A. Nuzum, of Virginia, to be a member of the U.S. International Trade Commission for the remainder of the term expiring June 16, 1996.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

REGARDING THE APPOINTMENT PROCEDURES OF THE U.S. INTERNATIONAL TRADE COMMISSION

The PRESIDING OFFICER. Under the previous order, the Senate Committee on Finance is discharged from further consideration of H.R. 3624, a bill regarding the appointment procedures of the U.S. International Trade Commission, and the Senate will proceed to its immediate consideration; the bill is deemed read a third time, passed, and the motion to reconsider be laid on the table.

So the bill (H.R. 3624) was deemed read a third time and passed.

Mr. BENTSEN. Mr. President, the bill that we are approving today is intended to correct serious problems that have arisen in connection with the appointment of Commissioners to serve as chairpersons of the International Trade Commission [ITC]. I introduced identical legislation last month (S. 1881), and I want to take this opportunity to describe the bill and to explain why I think its passage is necessary.

Congress struggled for years to find a workable administrative structure for the ITC which would not compromise the agency's mission as both an independent source of knowledgeable trade advice to the Congress and the executive branch and as an independent arbiter of trade cases. The solution found in 1977 ensured that no single political party or individual could exercise undue influence over the Commission on substantive issues.

That delicate balance has now been upset because the administration has refused to comply with the law the Congress so carefully drafted and, in so doing, has sought to politicize the International Trade Commission—contrary to Congress' express desires.

Let me explain, and let me begin by putting our current situation in a historical context. Under the structure that prevailed until 1977, each Commissioner bore equal responsibility for the administrative details of running the Commission. That deflected the time and attention of all of the Commissioners from their main substantive concerns and created an administrative deadlock. Congress debated the problem for 2 years—in 1976 and 1977—and finally devised what we thought was a decent solution. Throughout that 2-year debate, we maintained that we should avoid politicizing the agency, undermining its independence, or creating a situation in which one Commissioner or one political party could unduly influence the substantive agenda of the Commission.

The balance that we stuck in our 1977 legislation was a careful one. We provided that the President appoint a Commissioner as Chair and Vice Chair for a 2-year term. We vested the day-to-day administrative responsibilities in the Chair, subject to disapproval by a majority vote of the Commissioners. We made the Chair responsible for initiating budget matters, and provided the chair with the authority to dismiss senior supervisory employees—both responsibilities subject, however, to majority approval of the Commissioners.

As a counterweight, we provided that the chairmanship should rotate between political parties every 2 years, and that the vice chairperson be of a different political party than the chairperson. We stated clearly at that time that the new structure we adopted was intended to strengthen the independence of the Commission—and not permit the Commission to become merely another tool of the executive branch.

The delicate balance that we struck in that legislation has been delib-

erately undercut by the administration in recent years. Instead of complying with the law, the administration has chosen to ignore it.

Let us take a look at what has happened in the past several years, bearing in mind that the statute clearly calls on President to name a chairperson for a 2-year term, and to rotate the chairmanship between political parties. In June 1986, the President named a pro-Republican independent as chairperson. Her vice chairperson was also a Republican. When it came time to name a new chairperson in June 1988, after some delay, the President named a Republican. In June 1990, a new chairmanship term began. Instead of naming a Democrat to that position—as the law requires—the President has simply refused to designate a chairperson at all. Instead, he has named the former Republican Chair to serve as Vice Chair, and in that capacity, she has acted as Chairperson.

Now, almost 18 months of a 24-month term have elapsed—a term in which a Democratic Commissioner was to have headed the agency—and the President still has not designated a Democrat to serve as Chair. Thus, a Democrat has not served as Chair since 1986, and that is clearly contrary to congressional intent.

It is more than that. It is an outrage—and a striking example of bad Government by this administration.

H.R. 3624 attempts to correct this situation—a correction which, frankly, would not have been necessary if the President had implemented the law as intended. First, the bill attempts to prevent future manipulation of the statute by providing that, where the President fails to appoint a Chairperson as of the date of a new 2-year term, the Commissioner with the longest period of service who is a member of an eligible political party; that is, not a member of the same political party as the immediately preceding Chairperson, shall serve as Chairperson until the President makes his designation.

Second, the bill seeks to correct, at least partially, the imbalance that the administration has created when it manipulated the chairmanship to achieve, in effect, almost 6 years of a Republican chairmanship. The bill would require the President to appoint a Democratic Chair for the term beginning in June 1992.

Finally, the bill also amends the eligibility requirements for chairperson by providing that only Commissioners who have served at least 1 year as a Commissioner are eligible to become Chairperson. The current rule provides that the two most junior members of the Commission are ineligible to serve as Chairperson. That rule has created unexpected anomalies, such as Commissioners with long periods of service being ineligible to serve as Chair because of the failure to make prompt appointments to the chairmanship. I expect that the new rule will be more workable, while still preserving the requirement that only experienced Commissioners may serve as Chairperson.

It is my belief that these modifications will help to restore to the International Trade Commission the independence and the balance that Congress has fought to preserve—and reverse the trend toward increasing politicization that Presidents Reagan and Bush have promoted.

The PRESIDING OFFICER. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, it is my intention that the Senate will next proceed to the supplemental appropriations bill. I have discussed the matter with the chairman of the Appropriations Committee, the ranking member, and the distinguished Republican leader, and have requested consent of the Republican leader to proceed to that bill at this time.

He advises me that he is not able to give that consent at this time but will be meeting and consulting with several of his colleagues shortly, and he indicated that he would respond to me in the very near future, hopefully within the next half hour or so, on whether or not we will be able to proceed to that bill this evening.

As all Senators know, if we do not get consent, then we will have to file a motion to proceed and a cloture motion on the motion to proceed to the supplemental appropriations bill, which we will do, if necessary. That would simply, of course, result in a substantial delay in getting to that bill.

We hope that we can begin the bill and make good progress on it this evening. There are a number of other matters that require the attention of the Senate, which I will shortly undertake while awaiting a response.

But Senators should be aware that the possibility of taking up important legislation and having votes later this evening does exist. That may occur, and Senators should remain close to the Capitol until such time as we are able to make a definite statement in that regard.

So, I want to repeat: We intend to go to the supplemental appropriations bill. It is my hope that we can begin it this evening if we can get consent to do so. If not, we will file cloture on the motion to proceed and then get to it as soon as we can under the rule.

In the meantime, I hope to be able to say one way or the other in that regard within a half hour or so and will so advise Senators as soon as I receive that information.

There will be other business conducted in the meantime that will not require rollcall votes.

Mr. President, I know the distinguished Senator from Kansas wished to be recognized, and so I will yield the floor at this time for her to make her statement. And then I will seek to conduct the other business after that.

Mrs. KASSEBAUM. Mr. President, I thank the majority leader.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mrs. KASSEBAUM. I thank the Chair.

(The remarks of Mrs. KASSEBAUM pertaining to the introduction of Senate Joint Resolution 234 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mrs. KASSEBAUM. I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. EXON. 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 Nebraska is recognized.

Mr. EXON. I thank the Chair.

(The remarks of Mr. EXON pertaining to the introduction of S. 1998 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER (Mr. AKAKA). Without objection, it is so ordered.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,440th day that Terry Anderson has been held captive in Lebanon.

We read each day now that the hostage crisis that has persisted for more than 7 years is, at long last, drawing to a close. And the developments over the last few months certainly point to this conclusion. Mr. President, I ask unanimous consent that an Associated Press chronology of recent events be printed in the RECORD at this time.

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

BRIEF LOOK AT RECENT HOSTAGE DEVELOPMENTS IN MIDDLE EAST

Here is a brief look at recent developments in the Mideast hostage situation:

Aug. 8 British hostage John McCarthy is freed. French aid worker Jerome Leyraud is kidnapped in Beirut. A little-known group called the Organization for the Defense of

Prisoners' Rights claims responsibility and says it will kill Leyraud if another Westerner is freed.

Aug. 11 Leyraud, 26, is released in good condition. Hostage Edward Tracy is freed in Beirut.

Sept. 11 Israel releases 51 Arab prisoners and the bodies of nine Arab guerrillas as demanded by pro-Iranian groups, after receiving confirmation that an Israeli serviceman missing in Lebanon was dead. Israel said it released the prisoners in recognition of the U.N. chief's efforts to secure a broad-based hostage deal involving the 11 Western hostages.

Sept. 13 The body of an Israeli soldier missing in Lebanon since 1983 is returned to the Jewish state. Israel allows the return of a deported Palestinian.

Sept. 24 Briton Jack Mann is released in Beirut by the Revolutionary Justice Organization, a Shiite Muslim faction.

Oct. 6 In a videotape, Terry Anderson urges all parties to accelerate negotiations to free Western hostages and that hundreds of Arab prisoners held by Israel deserve freedom, too.

Oct. 19 Israel announces it has received proof that another of its servicemen missing in Lebanon is dead.

Oct. 21 Israel and its allied militia in Lebanon free 15 Lebanese prisoners.

Oct. 22 American professor Jesse Turner is released by the Islamic Jihad for the Liberation of Palestine.

Nov. 15 U.N. chief mediator on the hostage issue, Giandomenico Picco, leaves New York for the Mideast.

Nov. 17 The Tehran Times, the English-language Iranian newspaper, says an American and an British hostage will soon be freed on humanitarian grounds.

Nov. 18 Islamic Jihad releases American Thomas Sutherland and Briton Terry Waite.

MASSACRE IN EAST TIMOR

Mr. MOYNIHAN. Mr. President, the illegal and bloody occupation of East Timor continues. For 16 years, Indonesia has occupied this unfortunate former Portuguese colony. within months of Indonesia's invasion, 10 percent of the native population has been killed, a figure comparable to the percentage losses suffered by the Soviet Union during the entirety of the Second World War. Today some estimates place the figure at about 30 percent, a figure comparable to the holocaust suffered in Cambodia under the Khmer Rouge.

On November 12, 1991, Indonesian troops opened fire on unarmed civilians attending a memorial ceremony at a cemetery in East Timor. A minimum figure for the death toll is 100; other estimates suggest that the toll was closer to 200. Reporters covering the massacre were savagely beaten. And yet, in a genocidal war which has had too few video images to capture the attention of the world, some film of the massacre survived. It stand as an irrefutable indictment of the ferocity of the Indonesian response to even peaceful protest.

Two recent articles have chronicled this sorry event. First, in an article titled "Horrid Silence Over East Timor" in the Washington Post, Mary McGrory denounces both Indonesia's actions and the world's indifference with her usual eloquence. Second, Juan Gonzalez writes in the New York Daily News that "The blood of East Timor can't draw much U.S. ink." I ask unanimous consent that both these articles be printed in the RECORD.

Mr. President, at the time of Indonesia's invasion, I served as the U.S. Permanent Representative to the United Nations. Our response to this event, as to Morocco's invasion of western Sahara was determined by the State Department's cold war perspective; Indonesia and Morocco were, at least tacitly, United States allies and, thus, the United Nations was to take no action to effectively frustrate their actions. As I have written, it is clear that both invasions violated international law. Indeed. The International Court of Justice had written an opinion specifically finding that western Sahara was not a possession of Morocco and was entitled to the right of self-determination. This fact had little purchase in Washington of the day. It would be a mistake to think that I found these events—or U.S. policy concerning them—anything less than tragic and misguided. The United Nations was being used as a cold war battle ground, rather than a mechanism to enforce international law. As I wrote, "the Charter was being drained of meaning." My writings on United States policy toward East Timor reflected the irony of our failure to enforce a rule of international law which we had largely put in place, and I would hope that it would be recognized as such.

Mr. President, with the cold war over it is time to work to redress some of the errors of the past. If the President's new world order is to have meaning, then the rule of law and the Charter's flat prohibition on the use of force to resolve international disputes must be enforced. I urge the administration to work diligently to enforce the rule of law on East Timor.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Nov. 19, 1991]

HORRID SILENCE OVER EAST TIMOR

(By Mary McGrory)

You haven't seen on your home screen the horrors that have been occurring in a country you've never heard of. "No visuals," say the nets, so Americans who rely on television for their news don't know about the latest atrocity in East Timor—a little place God forgot. On Nov. 12, Indonesian soldiers opened fire on unarmed mourners in a cemetery near Dili, the capitol of East Timor.

There is, however, a "visual" available. It's the white bandage wrapped around the fractured skull of Allan Nairn, a 36-year-old correspondent for the New Yorker magazine, who with his partner, Amy Goodman, a producer for Pacifica Network news, was beaten by the murderous troops.

In a sense, Nairn and Goodman were seeing their taxpayers' dollars at work. The rifle butts which fractured Nairn's skull were M-16s, U.S. weapons provided by Washington to our friends the Indonesians. Since 1974, when the U.N. granted independence to East Timor, then a Portuguese colony, the Indonesians have refused to recognize its sovereignty. In 1975, when the military dictatorship of Gen. Suharto launched a savage invasion of East Timor, the United States made a feeble protest: Indonesia was letting our nuclear subs pass through their waters, an important Cold War consideration.

The motivation for supporting them since is totally baffling. "I've never heard a good reason," says Rep. Tony Hall (D-Ohio), one of the few members of Congress who has paid attention to Indonesia's systematic attempt to subjugate the Timorese.

Some 200,000 of a nation of 700,000 Timorese have been murdered. Others have been subjected to arrest, detention, torture, or disappearance. Although George Bush made a tremendous fuss over Kuwait, a slightly larger country that was also invaded by a neighbor, he has not raised his voice over East Timor. The Roman Catholic bishop of East Timor says 160 people died in the massacre. The Indonesian military has variously said that the crowd was "warned" and that "people who don't behave properly have to be shot."

In the wake of the massacre, we have condemned the action, called for an official inquiry, and sent our ambassador to Dili to investigate. But the administration will not support Hall's move to cut $1.9 million for military education out of the $50 million we send to Indonesia yearly. State Department spokesman Richard Boucher said we should continue to finance their education because it can "contribute to the professionalism of the military and expose it to democratic and humanitarian standards."

The reason we know anything about the latest atrocity is that a handful of Western witnesses, besides Nairn and Goodman, survived. They included Yorkshire network correspondent Chris Wenner, who has three minutes of tape of the massacre, and an Italian priest, Rento Stefani, who also has a video. They were in the crowd of thousands gathered at the gates on Nov. 12 to visit the grave of a young Timorese resistance workers who had been shot two weeks before by the military when he sought sanctuary in a Catholic church.

Nairn and Goodman went to the head of the procession as it paused at the cemetery gates, thinking Westerners conspicuously armed with cameras might inhibit violence. It was a bad guess. The soldiers began beating them with rifles. Nairn flung himself on Goodman; they hit him harder. At one point, the soldiers aimed rifles at their heads, and Goodman shouted, "Please, we are Americans, we are Americans." She held up her passport. The soliders had Nairn's.

The pair managed to board a passing truck, packed with wounded and terrified passengers, and were taken to a hospital. Nairn was bleeding from the—ears. For evidence, Amy Goodman wrapped around her waist his bloody shirt. At the airport, they talked their way onto a flight to Bali. Goodman told authorities Nairn was sick. They phoned ahead to the U.S. consul about Nairn's passport and he met them.

At Guam, their next stop, they tied up the six lines in the hospital emergency room telephoning news organizations all over the world.

They cannot imagine that this is not a major news event. Perhaps there is just too much competition in bad news about human rights in Asia. In China, Secretary of State

James A. Baker III was handed his head when he brought up human rights: Two dissidents were arrested to prevent them from talking to him. In Burma, the winner of the Nobel Peace Prize, Aung San Suu Kyi, is under house arrest. In Hong Kong, Vietnamese boat people are forcibly repatriated. In Cambodia; the chief executioner of the Khmer Rouge is brought home to join the government, the ultimate, perhaps, in what Western diplomacy has wrought in the Pacific.

[From the New York Daily News, Nov. 20, 1991]

THE BLOOD OF EAST TIMOR CAN'T DRAW MUCH U.S. INK

(By Juan Gonzalez)

With Kuwait and the Kurds, Lithuania and Uzbekistan, even Croatia, so many countries have been vying to be Washington's favorite world cause this year that our fawning national press has had enough trouble just rewriting State Department press releases and spelling names correctly.

Thankfully, there are still a few journalists around like Amy Goodman, news editor at WBAI/Pacifica Radio, and Allan Nairn, correspondent for The New Yorker magazine; the kind of reporters who risk their lives getting stories our government would rather bury.

Because of their determination to cover stories others ignore, Goodman and Nairn were witnesses to an incredible human slaughter in an obscure and forgotten country which, until recently, foreigners were not allowed to visit.

The massacre happened on Nov. 12 in the East Timor city of Dili, just outside the Santa Cruz cemetery. East Timor is the size of Connecticut and is east of Indonesia and north of Australia.

By our government's own estimate, as many as 100 unarmed people were shot in cold blood by occupying Indonesian soldiers. Other estimates are as high as 200 dead.

This is only the latest in a series of killings and human rights violations that have left more than 200,000 East Timorese dead since 1975, roughly a third of the country's total population. We're talking genocide comparable to Cambodia's killing fields or to any Saddam Hussein atrocity.

"It's the site of one of the great holocausts of this century and few people have ever heard of it," said Nairn, who has been following events there for years.

The former Portuguese colony was granted its independence in 1975. But on Dec. 7 of that year, two days after President Gerald Ford and Secretary of State Henry Kissinger visited Indonesia and met with Gen. Suharto, the right-wing military dictator of the mostly Muslim country, Suharto invaded and annexed his newly independent and Catholic neighbor.

Just as in last year's invasion of Kuwait by Iraq, the United Nations Security Council immediately condemned the invasion and demanded the prompt withdrawal of Indonesian troops. But there were no blaring headlines in any U.S. newspapers, as there were with Kuwait or Croatia.

In fact, our own New York senator, Daniel Moynihan, then UN ambassador, boasts in his memoirs of having successfully prevented any UN action against Indonesia.

Since then, our government has continued to provide economic and military aid to Suharto's regime, amounting to nearly $70 million last year, while Indonesian troops continued their repression of the Timorese freedom movement.

Goodman, Nairn and a handful of European reporters arrived in Dili a few weeks ago to report on new negotiations between Portugal and Indonesia over the future of East Timor.

On Nov. 12, they were covering a protest march honoring 16-year-old Sebastiao Gomes, an independence supporter who had been killed two weeks earlier by soldiers who stormed a Catholic church.

Several thousand protesters marched to Gomes' grave and, after hearing anti-Indonesian speeches, filed out of the cemetery.

"All of a sudden, up the road, military transports appeared and began heading toward the crowd," Goodman recalled. From another street, hundreds of soldiers, armed with M-16s, began marching in formation toward the crowd.

"We decided to go to the front because we figured as Westerners we could head off any trouble," Goodman said. "That turned out to be wrong.

"About a dozen soldiers came up around the corner, lined up and just started shooting. It was the most shocking sight. They didn't pause for a second. Bodies started dropping all around us."

Other soldiers rushed up, flung Goodman and Nairn to the pavement and began pummeling them with rifle butts, fists and boots. Nairn jumped on Goodman to protect her. Both were then dragged down another street as the shooting continued, with M-16s pointed at their heads.

"We're Americans, Americans," Nairn told them. Only those words seemed to stop the soldiers from executing them.

As the soldiers turned to beat an old Timorese man, the reporters jumped into a passing truck. They arrived at the airport hours later, Nairn still bleeding profusely. They jumped on a plane for Bali, then flew on to Guam, where Nairn was treated for a fractured skull.

A British television cameraman, Max Stahl, had been in the cemetery when the shooting started and got some footage of the panicked protesters fleeing the soldiers' bullets. Stahl buried the film in the cemetery moments before soldiers arrested him, then retrieved it after his release.

His film—the only visual proof of the unprovoked massacre—aired on English television Monday.

Over at the State Department they quickly came up with a press release condemning the massacre, and the reaction of reporters was mostly, "East what?"

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to Executive Session to consider the following nominations:

Calendar 383. James G. Randolph, to be an Assistant Secretary of Energy;

Calendar 414. William C. Harrop, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Israel;

Calendar 415. A. Peter Burleigh, for the rank of Ambassador during his tenure of service as Coordinator for Counter-Terrorism;

Calendar 416. John G. Weinmann, for the rank of Ambassador during his tenure of service as Chief of Protocol;

Calendar 417. John K. Blackwell, for the rank of Ambassador during his tenure of service as Representative of the United States of America on the Human Rights Commission;

Calendar 418. Thomas R. Pickering, Alexander F. Watson, Joseph V. Reed, Jr., Dan Burton, Mervyn M. Dymally, George E. Moose, Jonathan Moore, Shirin Raziuddin Tahir-Kheli, Oscar Padilla, and Margaretta F. Rockefeller, to be Representatives and Alternate Representatives of the United States of America to the 46th Session of the General Assembly of the United Nations;

Calendar 419. Richard B. Stone, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Denmark;

Calendar 420. Michael B. McCaskey, to be a Member of the Peace Corps National Advisory Council;

Calendar 421. Richard N. Bond and Tom G. Kessinger, to be Members of the Peace Corps National Advisory Council;

Calendar 422. Ruth G. Cox and Roland H. Johnson, to be Members of the Peace Corps National Advisory Council;

Calendar 423. Reginald J. Brown, to be an Assistant Administrator of the Agency for International Development;

Calendar 424. Andrew S. Natsios, to be an Assistant Administrator of the Agency for International Development;

Calendar 425. Henrietta H. Fore, to be an Assistant Administrator of the Agency for International Development;

Calendar 426. Penn Kemble, Daniel A. Mica, and Cheryl F. Halpern, to be Members of the Board for International Broadcasting;

Calendar 427. Mark McCampbell Collins, Jr., to be U.S. Alternate Executive Director of the International Bank for Reconstruction and Development;

Calendar 428. John Condayan, to be an Associate Director of the U.S. Information Agency;

Calendar 429. Jose A. Costa, Jr., Joseph F. Glennon, to be members of the Advisory Board for Cuba Broadcasting;

Calendar 430. Charles Tyroler II, to be a member of the Advisory Board for Cuba Broadcasting; and

Calendar 431. Pamela J. Turner, to be a member of the U.S. Advisory Commission on Public Diplomacy, and

All nominations placed on the Secretary's desk in the Foreign Service.

I further ask unanimous consent that the Senate proceed to immediate consideration, and 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 block, 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 ENERGY

James G. Randolph, of Oklahoma, to be an Assistant Secretary of Energy (Fossil Energy).

DEPARTMENT OF STATE

William Caldwell Harrop, of New Jersey, a career member of the Senior Foreign Service, class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Israel.

A. Peter Burleigh, of California, A career member of the Senior Foreign Service, class of Minister-Counselor, for the rank of Ambassador during his tenure of service as Coordinator for Counter-Terrorism.

John Giffen Weinmann, of Louisiana, for the rank of Ambassador during his tenure of service as Chief of Protocol for the White House.

John Kenneth Blackwell, of Ohio, for the rank of Ambassador during his tenure of service as Representative of the United States of America on the Human Rights Commission of the Economic and Social Council of the United Nations.

The following-named persons to be Representatives and Alternate Representatives of the United States of America to the Forty-sixth Session of the General Assembly of the United Nations:

Representatives:

Thomas R. Pickering, of New Jersey.

Alexander Fletcher Watson, of Massachusetts.

Joseph Verner Reed, Jr., of Connecticut.

Dan Burton, of Indiana.

Mervyn M. Dymally, of California

Alternate Representatives:

George Edward Moose, of Maryland.

Jonathan Moore, of Massachusetts.

Shirin Raziuddin Tahir-Kheli, of Pennsylvania.

Oscar Padilla, of California.

Margaretta F. Rockefeller, of New York.

Richard B. Stone, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Denmark.

PEACE CORPS NATIONAL ADVISORY COUNCIL

Michael B. McCaskey, of Illinois, to be a Member of the Peace Corps National Advisory Council for a term expiring October 6, 1992.

The following named persons to be members of the Peace Corps National Advisory Council:

Richard N. Bond, of New York, for a term expiring October 6, 1992.

Tom G. Kessinger, of Pennsylvania, for a term expiring October 6, 1993.

The following-named persons to be Members of the Peace Corps National Advisory Council for terms expiring October 6, 1993:

Ruth Gardner Cox, of Texas. (Reappointment)

Roland H. Johnson, of Pennsylvania, vice Peter L. Boynton.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Reginald J. Brown, of Virginia, to be an Assistant Administrator of the Agency for International Development.

Andrew S. Natsios, of Massachusetts, to be an Assistant Administrator of the Agency for International Development, vice Philip Lawrence Christenson, resigned.

Henrietta Holsman Fore, of California, to be an Assistant Administrator of the Agency for International Development.

BOARD FOR INTERNATIONAL BROADCASTING

The following-named persons to be members of the Board for International Broadcasting:

Penn Kemble, of the District of Columbia, for a term expiring April 28, 1992.

Daniel A. Mica, of Florida, for a term expiring April 28, 1993.

Cheryl Feldman Halpern, of New Jersey, for a term expiring April 28, 1994.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Mark McCampbell Collins, Jr., of the District of Columbia, to be U.S. Alternate Executive Director of the International Bank for Reconstruction and Development for a term of 2 years.

U.S. INFORMATION AGENCY

John Condayan, of Virginia, to be an Associate Director of the U.S. Information Agency.

EXECUTIVE OFFICE OF THE PRESIDENT

The following named persons to be Members of the Advisory Board for Cuba Broadcasting for terms expiring October 27, 1994:

Jose A. Costa, Jr., of Florida, vice Danford L. Sawyer, Jr., term expired.

Joseph Francis Glennon, of Florida.

Charles Tyroler II, of Virginia, to be a Member of the Advisory Board for Cuba Broadcasting for a term expiring October 27, 1992.

U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY

Pamela J. Turner, of the District of Columbia, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 1992.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE FOREIGN SERVICE

Foreign Service nominations beginning Richard M. Brown, and ending Wendy A. Stickel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 29, 1991.

Foreign Service nominations beginning David Allan Alarid, and ending Carol K. Stocker, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 29, 1991.

STATEMENT ON THE NOMINATION OF JAMES RANDOLPH

Mr. WALLOP. Mr. President, on November 13, 1991, the Committee on Energy and Natural Resources favorably reported the nomination of James Randolph to be Assistant Secretary for Fossil Energy for the Department of Energy by a vote of 19–0.

Mr. Randolph is very well-qualified to take on the responsibilities of directing the Department's fossil energy programs. Following a distinguished military career in the U.S. Air Force and retiring as a major general, Mr. Randolph joined Kerr McGee Corp. He served from 1976 through 1988 as president of Kerr McGee Coal Corp. and retired in January 1989 as senior vice president, coal and uranium, Kerr McGee Corp. Mr. Randolph is a former chairman of the National Coal Council. He holds a B.S. degree in industrial engineering from the University of Michigan, as well as an M.S., military science from the U.S. Army Command and Staff University, and an M.S., international affairs from George Washington University.

I have urged Mr. Randolph in his new capacity to pay close attention to the use of fossil fuels as one of our Nation's natural resources. My State of Wyoming is the largest coal producing State in the Nation, and we are very interested in opening up new markets and maintaining our leadership role.

The U.S. right now has a leadership position in clean coal technology development. It is vital we maintain that leadership role, and make the technology available to developing countries such as China. As important as these technologies are to perceived international concerns about global warming, they are independently important to our Nation's effort to utilize coal in an environmentally benign manner.

Another area of concern that I have touched on with Mr. Randolph is the strategic petroleum reserve. The Congress authorized the Department of Energy to lease oil for storage in the SPR in 1990. While the Department did not get as broad authority as it would like in the recent Interior Appropriations Act, it is important that DOE initiate bilateral initiatives with countries who are prepared to lease oil for the SPR.

Mr. President, I support the nomination of James Randolph to be Assistant Secretary for Fossil Energy, and I urge my colleagues to join me in confirming him to this position.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume 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 sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 12:07 p.m., a message from the House of Representatives, delivered by Mr. Hanrahan, one of its clerks, announced that the Speaker has signed the following enrolled bill:

S. 1475. An act to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize programs under such Act, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore [Mr. BYRD].

At 1:05 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the bill (S. 1475) to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize programs under such Act, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2521) making appropriations for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes.

At 4:20 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2038) to authorize appropriations for fiscal year 1992 for intelligence and intelligence-related activities of the U.S. Government, the intelligence community staff, and the Central Intelligence Agency retirement and disability system, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the amendment of the House to the bill (H.R. 1724) to provide for the termination of the application of title IV of the Trade Act of 1974 to Czechoslovakia and Hungary; with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 458. An act for the relief of Pilar Mejia Weiss;

H.R. 635. An act for the relief of Abby Cooke;

H.R. 1917. An act for the relief of Michael Wu;

H.R. 3595. An act to delay until September 30, 1992, the issuance of any regulations by the Secretary of Health and Human Services changing the treatment of voluntary contributions and provider-specific taxes by States as a source of a State's expenditures for which Federal financial participation is available under the Medicaid Program and to maintain the treatment of intergovernmental transfers as such a source; and

H.J. Res. 346. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the Union of Soviet Socialist Republics.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 188. A concurrent resolution concerning freedom of emigration and movement for Syrian Jews;

H. Con. Res. 201. A concurrent resolution expressing the sense of the Congress relating to the need for a Conference on Security, Stability, Development, and Cooperation in Africa and commending the Helsinki Commission for its leadership on this initiative;

H. Con. Res. 214. A concurrent resolution expressing the sense of the Congress with respect to the implementation of the United Nations peace plan for the Western Sahara;

H. Con. Res. 216. A concurrent resolution concerning the use of forced labor in Chinese prisons; and

H. Con. Res. 241. A concurrent resolution expressing support for Zambia's transition to democracy.

A message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the bill (S. 272) to provide for a coordinated Federal program to ensure continued United States leadership in high-performance computing, and for other purposes; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3762. An act to amend the Metropolitan Washington Airports Act of 1986 to modify the composition of the Board of Review of the Metropolitan Washington Airports Authority, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 226. A concurrent resolution commending the participants in the Middle East peace conference convened in Madrid, and urging them to continue their pursuit of a just and lasting peace in the Middle East.

MEASURES REFERRED

The following bills and joint resolutions were read the first and second times by unanimous consent, and referred as indicated:

H.R. 458. An act for the relief of Pilar Mejia Weiss; to the Committee on the Judiciary.

H.R. 635. An act for the relief of Abby Cooke; to the Committee on the Judiciary.

H.R. 1917. An act for the relief of Michael Wu; to the Committee on the Judiciary.

H.R. 3595. An act to delay until September 30, 1992, the issuance of any regulations by the Secretary of Health and Human Services changing the treatment of voluntary contributions and provider-specific taxes by States as a source of a State's expenditures for which Federal financial participation is available under the Medicaid Program and to maintain the treatment of intergovernmental transfers as such a source; to the Committee on Finance.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 188. Concurrent resolution concerning freedom of emigration and movement for Syrian Jews; to the Committee on Foreign Relations.

H. Con. Res. 201. Concurrent resolution expressing the sense of the Congress relating to the need for a Conference on Security, Stability, Development, and Cooperation in Africa and commending the Helsinki Commission for its leadership on this initiative; to the Committee on Foreign Relations.

H. Con. Res. 214. Concurrent resolution expressing the sense of the Congress with respect to the implementation of the United Nations peace plan for the Western Sahara; to the Committee on Foreign Relations.

H. Con. Res. 241. Concurrent resolution expressing support for Zambia's transition to democracy; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill, received from the House of Representatives for concurrence on November 15, 1991, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3508. An act to amend the Public Health Service Act to revise and extend certain programs relating to the education of individuals as health professionals, and for other purposes.

ENROLLED BILL PRESENTED

The Secretary of the State reported that on today, November 20, 1991, he had presented to the President of the United States the following enrolled bill:

S. 1720. An act to amend Public Law 93-531 (25 U.S.C. 640d et seq.) to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program for fiscal years 1992, 1993, 1994, and 1995.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HEFLIN, from the Select Committee on Ethics:

Special Report entitled "Investigation of Senator Alan Cranston" (Rept. No. 102-223).

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. 653. A bill to prohibit injunctive relief, or an award of costs, including attorney's fees, against judicial officer for action taken in a judicial capacity (Rept. No. 102-224).

By Mr. BYRD, from the Committee on Appropriations:

Special Report entitled "Further Revised Allocation to Subcommittees of Budget Totals from the Concurrent Resolution for Fiscal Year 1992 (Rept. No. 102-225).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources:

Leo P. Duffy, of Pennsylvania, to be an Assistant Secretary of Energy (Environmental Restoration and Waste Management).

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. CRANSTON, from the Committee on Veterans' Affairs:

Sylvia Chavez Long, of New Mexico, to be an Assistant Secretary of Veterans Affairs (Congressional Affairs);

James Ashley Endicott, Jr., of Texas, to be General Counsel, Department of Veterans Affairs;

Jo Ann Krukar Webb, of Virginia, to be an Assistant Secretary of Veterans Affairs (Policy and Planning); and

Allen B. Clark, Jr., of Texas, to be Director of the National Cemetery System, Department of Veterans Affairs.

By Mr. BENTSEN, from the Committee on Finance:

Peter S. Watson, of California, to be a member of the United States International Trade Commission for the term expiring December 16, 2000.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. DURENBERGER:

S. 1992. A bill to amend title XIX of the Social Security Act to provide for waivers to allow States that meet certain criteria to operate pharmaceutical benefit programs independent of the medicaid drug purchasing requirements; to the Committee on Finance.

By Mr. CONRAD:

S. 1993. A bill to improve monitoring of the domestic uses made of certain foreign grain after importation, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HATFIELD:

S. 1994. A bill to provide assistance to States to enable such States to raise the quality of instruction in mathematics and science by providing equipment and materials necessary for hands-on instruction; to the Committee on Labor and Human Resources.

By Mr. SPECTER:

S. 1995. A bill to provide increased access to and affordability of health care, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. ROCKEFELLER:

S. 1996. A bill to amend title XVIII of the Social Security Act to provide for uniform coverage of anticancer drugs under the medicare program, and for other purposes; to the Committee on Finance.

By Mr. KASTEN:

S. 1997. A bill to amend the Internal Revenue Code of 1986 to exclude from the social security tax on self-employment income certain amounts received by insurance salesmen after retirement; to the Committee on Finance.

By Mr. EXON:

S. 1998. A bill to adopt the Airline Consumer Protection and Competition Emergency Commission Act of 1991; to the Committee on Commerce, Science, and Transportation.

By Mr. SIMPSON (for himself, Mr. WALLOP, Mr. HATCH and Mr. BURNS):

S. 1999. A bill to amend the Uniform Time Act of 1966 to alter the time period for Daylight Saving Time; to the Committee on Commerce, Science, and Transportation.

By Mrs. KASSEBAUM (for herself, Mr. SIMON, Mr. DECONCINI, Mr. MCCONNELL, Mr. ROBB, Mr. HATFIELD, Mr. KENNEDY, Mr. MOYNIHAN and Mr. D'AMATO):

S.J. Res. 234. A joint resolution expressing the sense of the Congress regarding the Government of Kenya's November 14 through 16, 1991 suppression of the democratic opposition and suspending economic and military assistance for Kenya; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ROTH:

S. Res. 225. A resolution amending the Standing Rules of the Senate; to the Committee on Rules and Administration.

By Mr. GARN (for Mr. DOLE):

S. Res. 226. A resolution on certain Minority party committee appointments; considered and agreed to.

By Mr. PRESSLER:

S. Res. 227. A resolution expressing the sense of the Senate that meaningful reforms with respect to agricultural subsidies must be achieved in the GATT negotiations; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURENBERGER:

S. 1992. A bill to amend title XIX of the Social Security Act to provide for waivers to allow States that meet certain criteria to operate pharmaceutical benefit programs independent of the Medicaid drug purchasing requirements; to the Committee on Finance.

OPERATION OF STATE PHARMACEUTICAL BENEFIT PROGRAMS INDEPENDENT OF MEDICAID

Mr. DURENBERGER. Mr. President, the American drug industry is on trial. We will all hear more on this subject later in the day from some of our other colleagues, particularly, those on the Special Committee on Aging. But because of relentlessly escalating prescription drug prices, the people of this country and many of its representatives believe the marketplace has failed. A verdict in favor of Federal price regulation, which is the industry's worst nightmare, could be on the horizon.

On May 24 of this year, I came to the floor and decried the escalating prices in the pharmaceutical industry and challenged the manufacturers of the prescription drugs to justify the pricing decisions. Mr. President, I told the industry to make its case.

In the last 6 months, I have gathered a lot of evidence. I have met with the CEO's of many major U.S. firms, and toured research facilities, and talked to scientists in Government and in the private sector. I met with economists at the Office of Technology Assessment and at the University of Minnesota. I spoke with pharmacists, HMO administrators, and State health officials in my State, and I have had occasion to meet some transgenic mice.

I would like to tell you what I learned. The United States has a very impressive, highly competitive, research-oriented pharmaceutical industry. In conjunction with our National Institutes of Health, which expends $8 billion in public funds on biomedical research, our pharmaceutical industry is among the most innovative in the world.

But we also pay an additional and a very high price for all that innovation. In fact, the people of the United States pay the highest prices for drugs by far of anyone in the world.

America has the only "free" market for pharmaceuticals of any major industrialized Nation. Americans are paying for research and development for the world, because most other countries are choosing to regulate drug prices.

Our market in this country may be free, but it is far from perfect. Indeed, the U.S. drug market is highly dysfunctional. Let me provide a few examples:

A functional market requires information, and information is lacking among those of us who are the buyers in the pharmaceutical market place.

Doctors are the primary decisionmakers for prescription drugs, but traditionally doctors have not concerned themselves with drug prices, with the cost effectiveness of drugs, the relationship between what it does and what it costs. Physicians have never accepted responsibility for the economic consequences of their decisions. They say it is outside of their expertise.

Traditionally, patients pay for their prescriptions without participating in the choices. The American public needs to be educated about drugs. Many have been persuaded and still believe that the more expensive and the newer the drug, the better that drug is for them.

The truth, Mr. President, is that everything that is new is not good, and everything that is good is not necessary. Cost-effective decisions are good medicine. U.S. drug consumers are not always getting what is best for them, but they, or third parties, pay as though they were.

The drug industry has not been a passive observer of this glaring lack of information in the marketplace. In fact, the industry has encouraged these dysfunctions. The drug industry spends billions on marketing and promotion to physicians, but offers little information about price comparison. The industry has fostered the idea that price is not relevant to the selection of pharmaceuticals—a notion that would be laughable in any other consumer context.

The drug industry says that it believes in a free market. Sometimes I wonder. If so, why do they not make the market work better? Many of their tactics undermine rather than support

a functioning marketplace. So they wonder why governments intervene in the market or assume the role of price regulator.

There are encouraging signs that buyers are wising up by grouping up. Some HMO's, hospital organizations, and physician groups like the Mayo Clinic are managing drug benefits like other health benefits. They realize that cost-effectiveness evaluations make sense. They are educating their doctors about the value of comparing prices of pharmaceuticals. They are negotiating with the drug companies on the basis of complete information, not marketing hype.

Some of the concessions that the industry won in OBRA 1990 in the Medicaid drug rebate program undermine the ability of Medicaid administrators to manage as effectively as HMO's. I am today introducing S. 1992, a bill to allow creative State Medicaid programs to obtain waivers in order to engage in cost-effective drug benefit management. If the drug industry believes in the marketplace, it will support my approach. I ask unanimous consent that S. 1992 be printed in the RECORD.

There being no objection, the text of S. 1992 was ordered to be printed in the RECORD, as follows:

S. 1992

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WAIVER OF MEDICAID REQUIREMENTS TO ALLOW CERTAIN STATES TO OPERATE INDEPENDENT DRUG PURCHASING PROGRAMS.

(a) IN GENERAL.—Section 1927 of the Social Security Act (42 U.S.C. 1396r-8) is amended by adding at the end the following new subsection:

"(1) STATE WAIVERS.—

"(1) IN GENERAL.—The Secretary shall provide for 2-year waivers from the requirements of subsections (a), (b), (c) and (d) to States that submit applications to the Secretary that meet the requirements of paragraph (2).

"(2) STATE APPLICATION CONTENTS.—A State seeking a waiver from the requirements described in paragraph (1) must submit an application to the Secretary that provides that the State has a plan to manage payment for covered outpatient drugs for which payments are made under this title in a manner—

"(A) that assures that total costs under such plan do not exceed what they would have been under the requirements of this section; and

"(B) that ensures appropriate and reasonable access of individuals eligible for benefits under this title to such drugs.

"(3) ADMINISTRATION.—The Secretary shall approve or disapprove an application submitted to the Secretary under this subsection within 90 days of receipt of such application or if additional information with respect to such an application, is requested within 30 days of receipt of such additional information. If the Secretary disapproves an application of a State under this subsection the Secretary shall notify the State in writing of such disapproval and shall include a specific description of how the application need be amended in order to be approved under this subsection.

"(4) RENEWAL.—The Secretary shall provide for renewal of waivers granted under this subsection for additional 2-year periods if a State demonstrates that it has met and continues to meet the requirements of this subsection.

"(5) NON-APPLICATION OF WAIVERED PROGRAMS TO BEST PRICE DETERMINATIONS.—The Secretary shall provide that rebate agreements entered into between States operating under waivers under this subsection and manufacturers of drugs and biologicals shall not be referenced or used in calculating best price or the amount of rebates under this section or for purposes of any other drug rebate or discount program operated by the Federal Government.".

(b) BUDGET NEUTRALITY.—The Secretary of Health and Human Services shall execute the amendment made by this section in such a manner as to ensure that payments under title XIX of the Social Security Act for covered outpatient drugs described in section 1927 of such Act are no greater or less than what such payments would have been but for the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to payments for calendar quarters beginning on or after July 1, 1992.

Mr. DURENBERGER. Mr. President, efforts to improve the marketplace may be too little and too late.

Mr. President, today my Finance Committee colleague from Arkansas and the chair of the Senate Special Committee on Aging, Senator PRYOR, is introducing a bill aimed at slowing the escalating prices of drugs. His bill reveals his frustration with this nonfunctional marketplace. I admire his efforts to address this problem and his tenacity in the pursuit of solutions.

I am sympathetic to his concerns, but not yet persuaded that his particular bill is the best remedy.

I have always supported the section 936 tax credit because it is an effective method of encouraging investment and job creation in Puerto Rico. I am not convinced that the potential reduction in section 936 tax credits contained in the bill will produce the desired result. It may very well encourage some of the drug companies to close their operations in Puerto Rico and reincorporate elsewhere. That could not only mean the loss of production jobs in Puerto Rico but the loss of R&D jobs on the mainland. From my perspective, that is too large a risk to take and, as I say, the jury is still out on this proposal.

Meanwhile, Mr. President, I am pledged to find market-based solutions to the problems of escalating drug prices. Not all these solutions need come from Congress. Why can they not come from those who provide us with medical care? How strong is the drug industry's commitment to real competition? How strong is organized medicine's commitment to controlling costs? Do they understand the economic pressures on American patients?

I want to remind the CEO's of drug companies of their responsibility to help make the market work. They should not oppose efforts to improve the functioning of the market, even if those efforts mean that buyers will be better informed and tougher negotiators.

Mr. President, some of my colleagues want to go to Canada to solve our health care problems. If the drug industry wants a Canadian-style solution, it is here on the floor. The Canadian Government has a patent medicine review board that can revoke patent protection for a durg if price increases are unjustified.

Does the industry want the Massachusetts-style solution in the Democratic leadership proposal? Do they want mandated national expenditure goals enforced by a Federal health expenditure board? If prices continue to rise, Government regulation will not be far behind.

So Mr. President, I say again, the jury is divided on the future of the pharmaceutical marketplace in America. Some have already concluded that the market will not work. And some of our colleagues will be on the floor saying that this afternoon. I still believe in the market, but even my confidence is waivering. Mr. President, the patience of the American people is wearing thin.

I urge the representatives of the medico-pharmaco industry in this country to engage in good-faith efforts to make the market work for the benefit of the American people. If they do not, their behavior will be the evidence used to sentence them to a verdict they will regret.

By Mr. CONRAD:

S. 1993. A bill to improve monitoring of the domestic uses made of certain foreign grain after importation; to the Committee on Agriculture, Nutrition, and Forestry.

MONITORING OF DOMESTIC USES OF CERTAIN IMPORTED FOREIGN GRAIN

Mr. CONRAD. Mr. President, I rise to introduce the Agricultural Trade Program Protection Act of 1991. This legislation is designed to protect the integrity of the agricultural trade and foreign food assistance programs of the United States.

Current laws require that only American agricultural products be exported under the Export Enhancement Program [EEP], the credit guarantee program—GSM 102 and 103— and the Public Law 480 food assistance program.

These trade programs are critical to helping keep American agricultural products competitive with those from highly subsidized producers in Canada and Europe. According to USDA, the effect of the European Community subsidies alone has been to idle 36 million acres of grains and oilseeds production in the United States—that, plus agricultural trade barriers in Europe and Asia, translates into about 250,000 lost

jobs. Without our agricultural trade programs, the economic and job losses would be even higher.

These programs are the only trade tools we have to fight the European agricultural trade war. We cannot afford to lose them.

Unfortunately, the United States has allowed increasingly larger amounts of highly subsidized grain imports. On the west coast, imports of feed grains come from the Scandinavian countries where their farmers are guaranteed a price 3 to 4 times the market price.

In the upper midwest, increasingly higher levels of imports have come from Canada under the United States-Canadian Free Trade Agreement.

And I might say that that agreement should be termed the so-called United States-Canadian free trade agreement: so-called because it is not a free trade agreement. It is a tariff reduction agreement. It is not free trade when Canada can send its grain across the border into the United States and we cannot send one kernel the other way. That is a so-called free trade agreement.

Strangely, the United States negotiators accepted, at Canada's insistence, a provision in the agreement which allows Canada to subsidize the transportation of its grain to Thunder Bay, Canada's primary grain export terminal. From Thunder Bay it is a short boat ride to U.S. mills and grain terminals on the Great Lakes.

In my State of North Dakota, Canadian farmers simply bring their grain across the border in trucks—at which point it enters the United States grain export stream.

The Canadians are shipping increasing amounts of grain to the United States rather than to their traditional export customers, in part, because of the high EC subsidies are taking their markets as well as ours and, in part, because their system is designed to move grain to their export terminals near U.S. users and grain export elevators.

Because grain is fungible, these imported stocks become interchangeable in our internal markets and are likely to be exported under our export support programs. Today we have no practical and effective method to keep track of non-U.S. origin grain.

Let me repeat that, Mr. President. What is happening is that Canadian grain is coming into United States markets and is being exported under our export programs at the expense of the American taxpayer. Does that make any sense? It makes absolutely none. It makes no sense to allow foreign grain to enter into the U.S. grain export stream. Canada is simply using our system to sell their grain.

This commingling of United States and foreign grain can make entire cargoes of our supplies ineligible for U.S. export assistance programs, since current law requires that an eligible agricultural commodity must be produced "entirely" in the United States to be eligible for USDA-operated programs.

Unfortunately, Mr. President, there is no way to know which grain is United States-origin grain and which grain is Canadian-origin grain.

These programs were designed to help U.S. farmers combat the high export subsidies of the European Community, not to help Canadian farmers. It makes no sense to allow foreign grain to enter the U.S. grain export stream. Canada is simply piggybacking on our system to sell their grain. If we allow this to happen without restriction, it is our own fault.

Canada foresaw a similar problem in their country when negotiating the United States-Canadian Free Trade Agreement. Canada reserved the right to require "end-use certificates" on grain imported from the United States. Canada has extended the use of these end-use certificates to include fruits and vegetables imported from the United States.

We really have three choices in dealing with this problem.

First, we could eliminate our agricultural export programs, surrender in the agricultural trade war, and let the Europeans take the field. We could do that. It would cost us billions of dollars in further losses to our farmers and our national economy—not to mention that it would cost us 250,000 jobs—but we could do that.

Second, we could do nothing and let foreign grain enter our export system and export programs. A minor variation on this option is to change the law to allow Canada's grain into our export system. I am sure the Canadian farmers would be grateful for that approach, but I guarantee that the United States taxpayer would not be.

Third, we could require end-use certificates for imported grain until such time as trade negotiators reach an agreement to eliminate export subsidy programs. In other words, we could do what the Canadians are doing to us.

The legislation I am introducing today provides for option 3. It gives the Secretary of Agriculture the ability to apply the most sensible option; that is, to require end-use certificates for imported grain. This bill protects the U.S. taxpayer, protects the U.S. farmer, and helps retain U.S. agricultural markets. That is the way Canada handles a similar problem, and it is legal under the United States-Canada Free Trade Agreement.

This legislation is supported by the National Association of Wheat Growers, the National Barley Growers Association, the National Corn Growers Association, the American Soybean Association, and the National Grain Sorghum Producers' Association.

Mr. President, I ask unanimous consent to show Senator LARRY CRAIG of Idaho as an original cosponsor of this legislation.

I ask, at this point, Mr. President, unanimous consent to have printed in the RECORD the bill together with a letter from those organizations in support of this legislation, and also a Journal of Commerce article entitled "Faster Market Adjustment Needed in North American Trade."

And I also ask unanimous consent that I be allowed to have printed in the RECORD the English version of the Canadian explanation and forms for the end-use certificate program that they have in their country.

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

S. 1993

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MONITORING OF DOMESTIC USES MADE OF CERTAIN FOREIGN GRAIN AFTER IMPORTANT.

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

(1) ENTRY.—The term "entry" means the entry into, or the withdrawal from warehouse for consumption in, the customs territory of the United States.

(2) FOREIGN GRAIN.—The term "foreign grain" means any of the following, if a product of any foreign country or instrumentality:

(A) Wheat provided for in heading 1001 of the Harmonized Tariff Schedule of the United States.

(B) Barley provided for in heading 1003.00 of such Schedule.

(C) Oats provided for in heading 1004.00.00 of such Schedule.

(b) CERTIFICATION REQUIREMENTS REGARDING FOREIGN GRAIN.—

(1) END-USE CERTIFICATE.—An end-use certificate that meets the requirements of subsection (c) shall be included in the documentation covering the entry of any foreign grain.

(2) QUARTERLY REPORTS.—A consignee of imported foreign grain shall submit to the Secretary of Agriculture a quarterly report that certifies—

(A) what percentage of the foreign grain covered by an end-use certificate was used by the consignee during the quarter; and

(B) that the grain referred to in paragraph (1) was used by the consignee for the purpose stated in the end-use certificate.

(c) END-USE CERTIFICATE AND QUARTERLY REPORT CONTENT.—The end-use certificates and quarterly reports required under subsection (b) shall be in such form, and require such information, as the Secretary of Agriculture considers necessary or appropriate to carry out the purposes of this section, including—

(1) in the case of the end-use certificate—

(A) the name and address of the importer of record of the foreign grain;

(B) the name and address of the consignee of the grain;

(C) the identification of the country of origin of the grain;

(D) a description by class and quantity of the grain covered by the certificate;

(D) specification of the purpose for which the consignee will use the grain; and

(E) the identification of the transporter of the grain from the port of entry to the processing facility of the consignee; and

(2) in the case of the quarterly report—

(A) the information referred to in subparagraphs (A) and (B) of paragraph (1);

(B) the identification of the end-use certificates currently held by the consignee;

(C) a statement of the quantity of the foreign grain covered by each of the end-use certificates identified under subparagraph (B) that was used during the quarter; and

(D) a statement of the use made during the quarter by the consignee of each quantity referred to in subparagraph (C).

(d) REGULATIONS.—The Secretary of Agriculture shall prescribe such requirements regarding the preparation and submission of the quarterly reports required under subsection (b)(2) as may be necessary or appropriate to carry out the purposes of this section.

(e) PENALTIES.—

(1) CUSTOMS PENALTIES.—End-use certificates required under this section shall be treated as any other customs documentation for purposes of applying the customs laws that prohibit the entry, or the attempt to enter, merchandise by fraud, gross negligence, or negligence.

(2) CIVIL PENALTIES.—Any person who knowingly violates any requirement prescribed by the Secretary of Agriculture to carry out this section is punishable by a civil penalty in an amount not to exceed $10,000.

(f) ENTRY PROHIBITED UNLESS END-USE CERTIFICATE PRESENTED.—The Commissioner of Customs may not permit the entry of foreign grain unless the importer of record presents at the time of entry of the grain an end-use certificate that complies with the applicable requirements of subsection (c).

NOVEMBER 13, 1991.

Hon. KENT CONRAD,
Senate Hart Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: We are very concerned about a serious problem that has surfaced in the U.S. marketing system which threatens to cripple our ability to remain competitive and limit the amount of assistance that can be provided to developing nations and emerging democracies.

Because grain is fungible, imported stocks become interchangeable in our international markets, and we have no practical and effective method to keep track of non-U.S. origin grain. Co-mingling of U.S. and foreign grain can make entire cargoes of our supplies ineligible for U.S. export assistance programs, since current law requires that an eligible agricultural commodity must be produced entirely in the U.S. to be eligible for USDA-operated programs.

We know of your continuing interest in monitoring developments which could seriously distort U.S. grain markets. Likewise, we all have an interest in protecting the integrity of U.S.-origin grain, in order that it will not become adulterated by foreign grain, thereby making it ineligible for vital government export programs.

We strongly support your efforts to establish an "end use certificate" procedure to track imported grain and require certification of its end use. Such a system would be very similar to the import procedures applied by the Canadians to any movement of grains from the U.S. to Canada.

It is our hope that other interested farm and commodity groups will also join in support of your efforts to protect the operation of programs that are critical to our export marketing system.

Sincerely yours,

American Soybean Association, National Association of Wheat Growers, National Barley Growers Association, National Corn Growers Association, National Grain Sorghum Producers' Association.

[From the Journal of Commerce, Oct. 7, 1991]

FASTER MARKET ADJUSTMENT NEEDED IN N. AMERICAN TRADE, CANADA SAYS

(By Charles W. Thurston)

Resolution of international trade disputes often is so pitifully slow that price-sensitive markets can be temporarily hijacked by low-cost competitors long before diplomatic help arrives.

This is particularly true in the perishable fruit and vegetable industry, in which a convoy of trucks laden with as-yet-unsold produce rolling toward a market can cause the price of a commodity to sag like a rotten tomato.

In more than two years of free trade between Canada and the United States, Canadian producers suffering from alleged U.S. produce dumping have only managed to invoke a so-called tariff snapback provision in three out of nine cases.

In the three cases, an import tariff that had been in place prior to the 1989 U.S.-Canada free-trade agreement was reinstated, or snapped back, temporarily.

Seeking to fend off overly cheap loads of asparagus, peaches and tomatoes, the Canadians, dutifully measured the below-market prices, documented the commodity acreage under competitive attack and alerted U.S. authorities to gain the relief.

The bad news, alas, at least for the Canadians, has been that the market price structures were routed anyway.

"If a snapback tariff is 3% but the price of an item has fallen from 85 cents to 30 cents, what the hell does it give you?" asked Danny Dempster, executive vice president of the Canadian Horticultural Council, an Ottowa produce trade association.

Such were the terms of Canada's first use of the snapback, to protect against dumped asparagus from the U.S. West Coast in 1990.

While U.S. growers and officials may not have been particularly upset with this track record for agricultural dispute resolution until now, Mexico's entry into the proposed trilateral free-trade agreement could change the outlook.

"The United States will have to look at (the snapback provision) from an import and export perspective, recognizing that what is sauce for the goose is sauce for the gander," Mr. Dempster suggests.

Because the snapback provision in U.S.-Canadian trade requires a monitoring of import prices, a measurement of cultivated acreage of the affected commodity, and two working days of notice to the offending country, "it is likely the cost of this exceeds any potential benefits it provides," Mr. Dempster complains.

To increase the penalty, Canada is proposing the use of a tariff surcharge to complement the tariff snapback. Such a surcharge already is recognized by the General Agreement on Tariffs and Trade, the Geneva-based organization that sets world trade rules.

But while Canada recognizes the surcharge tool as useful, the United States until now has not, the Canadians point out.

But again, the situation may change now that Mexico has entered the trade picture.

In order to monitor price variations, Canada began requiring a "confirmation of sale" document for all imported produce at the same time the U.S.-Canada trade pact started. The two-page, 28-part form allows the Canadians to track supplier, sale price, transporter, buyer, point of sale, volume, tax and a host of other factors.

No such form is required in the United States, where much of imported perishable agricultural products are sold on a consignment basis.

Canadian officials have suggested that such a form be developed for trilateral use, perhaps as an electronic documents, to quicken and sharpen monitoring practices.

One impact of such a document would be to decrease consignment selling and thus decentralize U.S. produce markets, where prices have traditionally been set well after goods cross the border.

If exporting sellers and importing buyers were forced to agree on a price prior to shipment, goods would likely move more directly to end users.

An estimated 40% of all food products in the United States now go through two or more stops before they get to the customer, said Patrick Kiernan, vice president of the Grocery Manufacturers of America, a Washington trade group.

One produce distribution center that could be significantly affected is in Nogales, Ariz., which serves as the key U.S. weigh station for produce imported from the states of Sinaloa and Sonora. Situated along Arizona State Highway 19, some of the warehouses owned by the 70 members of the West Mexico Vegetable Distributors Association could be rendered unnecessary under a North American free-trade pact.

"We all fight for as much direct business as we can get. But some times the buyers won't commit to a price and you've got to use brokers," commented Alberto Maldonado, president of the association.

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1. The Canadian Grain Commission provides end-use certificates for persons requiring these certificates for the importation into Canada of wheat, oats or barley originating in the United States of America.

2. Section 87.1(2) of the Canada Grain Act states the following: "All end-use certificates accompanying grain imported into Canada pursuant to paragraph 46 of the Canadian Wheat Board Act shall be submitted to persons employed in the administration or enforcement of the Customs Act for forwarding to the Commission."

3. Section 105.1 of the Canada Grain Act states: "No person shall knowingly use any grain in respect of which an end-use certificate has been submitted in respect of grain imported into Canada pursuant to paragraph 46 of the Canadian Wheat Board Act for any use other than consumption at the facility referred to in the certificate."

4. Section 87(3) of the Canada Grain Regulations states the following: "The importer mentioned in an end-use certificate shall provide the Commission, within ten days of delivery of the grain to the consignee mentioned in the end-use certificate, with a copy of the bill of lading on which an acknowledgement and the date of receipt of the grain at the consignee's facility, have been attested to by a representative of the consignee."

5. Section 87(5) of the Canada Grain Regulations states: "The consignee mentioned in an end-use certificate shall provide the Commission, within three months after and at three month intervals after receipt of the grain mentioned in the end-use certificate, with a report in the form set out in Form 2 of Schedule XV, until the grain has been fully consumed at the consignee's facility."

6. Individual end-use certificates are required for each shipment, and are to be pre-

sented to Canada Customs at the time of importation.

7. The possession of an end-use certificate does not relieve the importer of other legal requirements pertaining to the importation, such as those required by Revenue Canada (Customs and Excise) and Agriculture Canada (Plant Protection).

CANADIAN GRAIN COMMISSION, WINNIPEG, MANITOBA

Importer's Name and Address:
Phone Number:
Description of Grain Imported:
Wheat:
Oats:
Barley:
Quantity In Net Tonnes:
Type Of Processing Facility To Which Grain is Consigned:
Miling For Human Consumption:
Miling For Animal Feed:
Manufacturing/Specify Products:
Other/Specify:
Brewing or Malting:
Distilling:
Consignee Name and Address:
Phone Number:
Transportation (insert Name Of Compay Beside Appropriate Mode Of Transportation):
Railway:
Vessel:
Truck:

I, on behalf of the importer named above, declare that I have personal knowledge of the matters referred to herein and I hereby certify that the information provide above is correct, that the grain described in this Form is consigned directly to a processing facility in Canada for consumption at that facility and I undertake to provide the Canadian Grain Commission with the required evidence of delivery of the grain at that facility within ten days of such delivery.

Name of Importer's Authorized Representative (in block letters):
Signature:
Title:
For Customs Use:
Signed on behalf of Chief Officer of Customs:
Date Stamp of Customs Office of validation:

CANADIAN GRAIN COMMISSION, WINNIPEG, MANITOBA

GRAIN END-USE CERTIFICATION CONSIGNEE QUARTERLY REPORT

Consignee's Name and Address:
Importer's Name and Address:
Import End-Use Certificate Numbers:
Quantity (in net tonnes):
Class:
Date of receipt:

I, on behalf of the consignee named above declare that I have personal knowledge of the matters referred to herein and I hereby confirm that the grain described above (insert "X" before applicable statement):

Has been fully consumed at my facility.
Has been used in part.
(i) state quantity———tonnes.
(ii) state approximate further period of time for full use:———weeks.
In accordance with the use specified in the import end-use certificate.

Name of Consignee's Authorized Representative (in block letters):
Signature:
Date:

By Mr. HATFIELD:

S. 1994. A bill to provide assistance to States to enable such States to raise the quality of instruction in mathematics and science by providing equipment and materials necessary for hand-on instruction; to the Committee on Labor and Human Resources.

ELEMENTARY SCIENCE FACILITIES ACT

• Mr. HATFIELD. Mr. President, the legislation I am introducing today focuses on the national goal of raising student achievement in science and mathematics. It will provide elementary classrooms with the basis scientific equipment and materials necessary for hands-on discovery lessons which capture the interest and imaginations of young minds.

Because children have a natural curiosity about their world, they gain scientific knowledge most effectively through investigation. Rote learning does not foster creative problem solving, higher order thinking skills, or the skills to work as a team member.

Research indicates that children form strong opinions about science and mathematics by the end of the fifth grade. They either hate it or they love it. More young students would grow to love science if they have more opportunities to do science: to explore, measure, survey, and investigate with basic tools such as hand lenses, microscopes, scales, and thermometers. These, after all, are the activities that real scientists engage in—they don't passively sit and listen to someone or read explanations from a book.

The need to revitalize the science curriculum is clear, especially in elementary schools. The Congressional Research Service estimates that science is taught in elementary schools directly from a textbook for, on the average, approximately 15 minutes a day. Even more distressing, nearly 80 percent of elementary teachers used the last period of the day, when students are least attentive, for science instruction.

The Department of Education reports that only 7 percent of high school seniors are prepared for college level courses. Seven percent is not enough! All of the citizens in a technological society must be scientifically literate. It is hard to believe that one of the wealthiest countries in the world does not provide all of its young children with the basic tools for meaningful scientific explorations.

Many teachers, even those who receive the finest training, will be unable to implement new programs without adequate resources. My legislation will provide young students and their teachers with some of the scientific equipment and materials essential for hands-on exploration and experiments.

At a time of scarce resources and competing priorities, we can give only limited amounts to this critical need. When looking for a reasonable starting point in determining a dollar amount, I wondered: What can we do with one dollar of funding for each student per year?

There are about 30 million elementary students in the 50 states, the territories, and commonwealth; 30 in formula grants each year for 3 years, with a local matching amount, would provide an average of $200 for each class of elementary students. Some classes in some schools are well-equipped and won't need this modest infusion, which will provide more to others.

Each State will coordinate grants to local education agencies, giving first priority to those agencies which— first serve large numbers of low-income students; second, address the needs of underrepresented groups in mathematics and science; and third, demonstrate the integration of grant-funded equipment into a plan for improving science and mathematics instruction.

Over 3 years, each elementary science classroom in the Nation could receive a grant under this bill. Teachers will no longer face daily the riddle of how to provide activity-based scientific experience for their young students without equipment and materials. By providing the means to enable all of America's young children to experience the excitement of engaging in science, we will strengthen America's future ability to compete, scientifically and technologically, in the global economy. A strong foundation in the sciences can be formed only by giving our young students access to the basic tools of scientific investigations. With appropriate resources that enrich instruction, science can come alive for all of our children.

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. 1994

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Elementary Science Facilities Act".

SEC. 2. STATEMENT OF PURPOSE.

It is the purpose of this Act to raise the quality of instruction in mathematics and science in the Nation's elementary schools by providing equipment and materials necessary for hands-on instruction through assistance to State and local educational agencies.

SEC. 3. PROGRAM AUTHORIZED.

(a) GRANTS.—The Secretary is authorized to make allotments to State educational agencies under section 4 to enable such agencies to award grants to local educational agencies for the purpose of providing equipment and materials to elementary schools to improve mathematics and science education in such schools.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 for each of fiscal years 1993, 1994, and 1995 to carry out this Act.

SEC. 4. ALLOTMENTS OF FUNDS.

(a) IN GENERAL.—From the amount appropriated under section 3(b) for any fiscal year, the Secretary shall reserve—

(1) not more than ½ of 1 percent for allotment among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau according to their respective needs for assistance under this Act; and

(2) ½ of 1 percent for programs for Indian students served by schools funded by the Secretary of the Interior which are consistent with the purposes of this part.

(b) ALLOTMENT.—From the amount not reserved pursuant to subsection (a), the Secretary shall allot among State educational agencies as follows:

(1) One-half of such remainder shall be distributed among the State educational agencies by allotting to each State educational agency an amount which bears the same ratio to such one-half of such remainder as the number of children aged 5 to 11, inclusive, in the State bears to the number of such children in all States.

(2) One-half of such remainder shall be distributed among the State educational agencies according to each State's share of allocations under chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(c) DEFINITIONS.—For the purposes of this Act—

(1) the term "elementary school" has the same meaning given such term in section 1471(8) of the Elementary and Secondary Education Act of 1965;

(2) the term "local educational agency" has the same meaning given such term in section 1471(12) of the Elementary and Secondary Education Act of 1965;

(3) the term "Secretary", unless otherwise specified, means the Secretary of Education;

(4) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(5) the term "State educational agency" has the same meaning given to such term by section 1471(23) of the Elementary and Secondary Education Act of 1965.

(d) DATA.—The number of children aged 5 to 11, inclusive, in the State and in all States shall be determined by the Secretary on the basis of the most recent satisfactory data available to the Secretary.

SEC. 5. STATE APPLICATION.

(a) APPLICATION.—Each State educational agency desiring to receive an allotment under this Act shall file an application with the Secretary which covers a period of 3 fiscal years. Such application shall be filed at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(b) CONTENTS OF APPLICATION.—Each application described in subsection (a) shall—

(1) provide assurances that—

(A) the State educational agency shall use the allotment provided under this Act to award grants to local educational agencies within the State to enable such local educational agencies to carry out the purpose of this Act;

(B) the State educational agency will provide such fiscal control and funds accounting as the Secretary may require;

(C) every elementary school in the State is eligible to receive a grant under this Act once over the 3-year duration of the program assisted under this Act;

(D) funds provided under this Act will supplement, not supplant, State and local funds made available for activities authorized under this Act;

(E) during the 3-year period described in the application, the State educational agency will evaluate its standards and programs for teacher preparation and inservice professional development for elementary mathematics and science;

(F) the State educational agency will take into account the needs for greater access to and participation in mathematics and science by students and teachers from historically underrepresented groups, including females, minorities, individuals with limited-English proficiency, the economically disadvantaged, and individuals with disabilities; and

(G) that the needs of teachers and students in areas with high concentrations of low-income students and sparsely populated areas will be considered in awarding grants under this Act;

(2) provide, if appropriate, a description of how funds paid under this Act will be coordinated with State and local funds and other Federal resources, particularly with respect to programs for the professional development and inservice training of elementary school teachers in science and mathematics; and

(3) describe procedures—

(A) for submitting applications for programs described in sections 6 and 7 for distribution of payments under this Act within the State; and

(B) for approval of applications by the State educational agency, including appropriate procedures to assure that such agency will not disapprove an application without notice and opportunity for a hearing.

SEC. 6. LOCAL APPLICATION.

(a) APPLICATION.—A local educational agency that desires to receive a grant under this part shall submit an application to the State educational agency. Each such application shall contain assurances that each school served by the local educational agency shall be eligible for only one grant under this Act.

(b) CONTENTS OF APPLICATION.—Each application described in subsection (a) shall—

(1) describe how the local educational agency plans to set priorities on the use and distribution among schools of grant funds received under this Act to meet the purpose of this Act;

(2) include assurances that the local educational agency shall match on a dollar-for-dollar basis the funds received under this Act;

(3) describe, if applicable, how funds under this Act will be coordinated with State, local, and other Federal resources, especially with respect to programs for the professional development and inservice training of elementary school teachers in science and mathematics;

(4) describe the process which will be used to determine different levels of grant amounts to be awarded to schools with different needs.

(c) PRIORITY.—In awarding grants, the State educational agency shall give priority to applications that—

(1) assign highest priority to schools which are most seriously under-equipped;

(2) are attentive to the needs of underrepresented groups in science and mathematics;

(3) demonstrate how science and mathematics equipment will be part of a comprehensive plan of curriculum planning or implementation and teacher training supporting hands-on laboratory activities; and

(4) include plans for dissemination of lessons and activities using grant equipment and materials to teachers in schools not receiving grants.

SEC. 7. PARTICIPATION OF PRIVATE SCHOOLS.

(a) PARTICIPATION OF PRIVATE SCHOOLS.—To the extent consistent with the number of children in the State or in the school district of each local educational agency who are enrolled in private nonprofit elementary schools, such State educational agency shall, after consultation with appropriate private school representatives, make provision for providing funds under this Act as will assure the equitable participation of such private schools in the purposes and benefits of this Act.

(b) WAIVER.—If by reason of any provision of State law a local educational agency is prohibited from providing for the participation of children or teachers from private nonprofit schools as required by subsection (a), or if the Secretary determines that a State or local educational agency has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children or teachers.

SEC. 8. PROGRAM REQUIREMENTS.

(a) COORDINATION.—Each State educational agency receiving a grant under this Act shall—

(1) disseminate information to school districts and schools, including private schools, regarding the grant program;

(2) evaluate applications of local educational agencies;

(3) award grants to local educational agencies based on the priorities described in section 6(c); and

(4) evaluate local educational agencies' end-of-year summaries and submit such evaluation to the Secretary.

(b) LIMITATIONS ON USE OF FUNDS.—

(1) IN GENERAL.—Grant funds and matching funds under this Act only shall be used to purchase science equipment, science materials, or mathematical manipulative materials and shall not be used for computers, computer peripherals, software, textbooks, or staff development costs.

(2) CAPITAL IMPROVEMENTS.—Grant funds under this Act may not be used for capital improvements. No more than 50 percent of matching funds provided by the local educational agency may be used for capital improvements of classroom science facilities to support the hands-on instruction that this Act is intended to support, such as the installation of electrical outlets, plumbing, lab tables or counters, or ventilation mechanisms.

SEC. 9. FEDERAL ADMINISTRATION.

(a) TECHNICAL ASSISTANCE AND EVALUATION PROCEDURES.—The Secretary shall provide technical assistance and, in consultation with State and local representatives of the program assisted under this Act, shall develop procedures for State and local evaluations of the programs under this part.

(b) REPORT.—The Secretary shall report to the Congress each year on the program assisted under this Act.●

By Mr. SPECTER:

S. 1995. A bill to provide increased access to and affordability of health care, and for other purposes; to the Committee on Labor and Human Resources.

HEALTH CARE ACCESS AND AFFORDABILITY ACT OF 1991

Mr. SPECTER. Mr. President, the issue of health care is tremendously important in the United States today. Over 800 bills have been introduced in the first session of the 102d Congress on

this one issue alone. The majority of the legislative proposals, introduced by both Republicans and Democrats, involve comprehensive reform affecting the access to, and the affordability of, health care.

Earlier this month, I joined with several of my colleagues in introducing the Health Equity and Access Improvement Act, S. 1936. This legislation is the composite of the effort of many Senators working for over 16 months to craft a responsible health care bill. While I have reservations about some of the details, in my view, the bill provides a good starting point for the consideration of comprehensive reform to extend adequate medical care to all Americans. This bill covers aspects of health care which were not included in S. 1936.

Although strong consensus has emerged in the Congress for health care reform, no consensus yet has emerged on the best means of extending affordable care to all of our Nation's citizens. Enactment of effective comprehensive health care reform will not happen overnight. It will take time to craft meaningful legislation which can pass the Congress and be signed by the President.

We do not have to wait upon comprehensive reform, however, to improve access to health care and reduce the Nation's $760 billion health care bill. Today I am introducing legislation which supplements the proposals of S. 1936 and builds upon established public health programs currently under the jurisdiction of the Labor, HHS and Education Subcommittee on Appropriations. As the ranking Republican member of the subcommittee, I am convinced that through increased investment in programs of health research, primary care delivery, disease prevention, and health promotion, we can begin to improve access to care for millions of Americans and cut the escalating cost of health care in this country.

Progress has been made toward improving the Federal investment in health programs. The National Institutes of Health is supporting over 26,000 research grants into understanding, treating and curing disease, the highest in the agency's history. Funding for disease prevention programs at the Centers for Disease Control has risen to over $1.5 billion, an increase of nearly $400 million over the past 2 years. Included, is an increase for the childhood immunization program of $111 million, an increase of $19 million for lead poisoning prevention and an increase of $50 million for the Breast and Cervical Cancer Mortality Prevention Program. In total, Federal support for health programs administered by the Public Health Service has risen from $12.9 billion when I became the ranking Republican in 1989, to over $16.5 billion for fiscal year 1992.

The Health Care Access and Affordability Act builds upon that progress by establishing new spending targets for a variety of Public Health Service programs and by expanding their authorized activities. The bill includes the following proposals to improve access and limit the growth in health care expenditures:

Expands federally supported primary care clinics by $380,000,000. This will improve access to care in medically underserved areas and reduce the need for costly emergency room care;

Expands federally supported health promotion and prevention services by $720,000,000. These programs are focused upon reducing health risks through changing the behavior of both providers and consumers and encouraging greater responsibility for healthy behavior;

Encourages the modification of provider practice styles by changing provider behavior through medical effectiveness research and direct modification of medical practice; and

Establishes a new Federal initiative on drug development with a focus on the diseases that have high mortality and societal costs.

PRIMARY HEALTH CARE

Effective health care reform must not only address access to health care, but also must take steps to prevent the need for treatment. The cornerstone of this health care bill is the delivery of primary and preventive care services to households and individuals in convenient and familiar places. If health is to be a true national priority, it is logical to provide health care services in the locality where people live and work.

The Health Care Access and Affordability Act expands the authorization of programs such as community and migrant health centers, maternal and child health block grants, and health care for the homeless. Maximizing the use of these community based health care programs will help eliminate the fragmentation which characterizes the existing health care system. Utilization of this system will promote better access to services such as health education, screening, immunization, well-child care, and prenatal care. Utilization of this system also will yield cost savings. Community based clinics have effectively reduced infant mortality, yielded better immunization coverage, and fostered earlier detection and treatment of preventable illnesses.

HEALTH PROMOTION AND PREVENTION

Health care consumers also must be given the tools to assume more responsibility for their health. Individuals should develop the ability to be more prudent buyers of health care services and better managers of their lifestyle. The Centers for Disease Control estimates that of the 2.2 million deaths which occur in the United States every year, about half are potentially preventable. Secretary Sullivan has estimated that behavioral induced illnesses and injury cost the nation's health care system $40 billion annually.

Programs, such as childhood immunization, lead poisoning prevention, preventive health and health services block grants, and breast and cervical cancer prevention provide key Federal support to States, localities, and community based organizations to halt the development of disease and/or injury. Health prevention, promotion of healthier lifestyles, and education on particular health care conditions can improve health care delivery and reduce health care costs.

MEDICAL EFFECTIVENESS RESEARCH AND MEDICAL PRACTICE GUIDELINES

Rapid development and diffusion of technologies is a component of our high-technology health care system. Our ability to produce more health care devices and procedures is going beyond our knowledge of when and how they should be used. There is also extensive variation in our physician's practice patterns as well as the resultant health care outcomes. The problem of increasing technology and proliferization of high-technology services within our health care system contributes to the high and rapidly rising health care costs. There exists a potential that medical practice research may address these concerns and reduce health care costs and improve quality.

My legislation provides for expanding the authorization for medical treatment effectiveness research, including establishing medical practice guidelines on the conditions for which there is found to be a wide variation in current medical practice. Practice guidelines are systematically developed statements which assist the practitioner and the patient in decisions about appropriate health care.

FEDERAL INITIATIVE ON DRUG DEVELOPMENT

In fiscal year 1990, the National Institutes of Health had approved, but was not able to fund over $110 million in major new clinical trials. This underfunding of clinical trials occurred in spite of the social and economic costs of the leading diseases. For example, Alzheimer's disease has societal costs of $88 billion compared to $230 million in federally funded research; Heart Disease has societal costs of $94 billion compared to $704 million in federally funded research; Cancer has societal costs of $72 billion compared to $1.7 billion in federally funded research; AIDS societal costs $66 billion compared to $1.1 billion in federally funded research.

My bill will specifically authorize a program at the National Institutes of Health to expand support for clinical trials on promising new drugs and disease treatments. Priority will be given to the most costly diseases and those impacting the most number of people.

REPORT ON HEALTH CARE COST CONTROL TARGETS

On November 19, I participated in a joint hearing of the Special Committee on Aging and the Government Affairs Committee regarding strategies for cutting the cost of health care. Witnesses at the hearing testified concerning the fact that health care expenditures in the United States continue to grow at an alarming rate. The percent of our country's gross national product devoted to health care grew from 7.3 percent in 1970 to 12.3 percent in 1990. Projections for the year 2000 show that share rising to over 16 percent.

In contrast, other industrialized nations have had some success at limiting the growth in health care expenditures. Some have done so by establishing caps and targets for health care spending and for the payment of services. A General Accounting Office report, released on November 15, 1991, found that France, Germany, and Japan have implemented health care spending targets and caps and have successfully lowered the increase in health care costs. In Germany, for example, the report found that spending caps had reduced expenditures by as much as 17 percent below what would have been spent on physician care without the caps.

To explore the feasibility of implementing a similar strategy in this country, the bill directs the Secretary of Health and Human Services to issue a report to the Congress regarding establishing national spending targets for health care and health care services as a means of controlling health care costs. The report is to be prepared after the Secretary's consideration of the recommendations of the Health Care Cost Control Advisory Committee established under in the bill. The advisory committee is to be comprised of representatives from the provider communities, organized labor, business, academia, and private insurers.

FINANCING

As ranking Republican on the appropriations subcommittee which has jurisdiction over funding for these programs, I am aware of the fiscal constraints imposed upon domestic spending by the Budget Enforcement Act of 1990. I realize that without increasing the funds available for domestic programs in fiscal year 1993, it will be difficult to meet the funding targets established in this bill. Next year, the Congress and the President will consider the implications of the dramatic changes in the Soviet Union for maintaining a strong national defense. A peace dividend resulting from reductions in the Budget Enforcement Act's caps for defense spending is likely. In my view, priorities in the distribution of the resultant peace dividend should be given to reducing the deficit and to increasing the investment in federally supported programs, such as health and education.

CONCLUSION

I am convinced that improving access to care and reducing the spiraling growth of health care expenditures can be achieved. By acting now to provide consumers and health care providers with the information and services necessary to prevent illness and disease, we can both improve the quality of life and begin to reduce the cost of medical care.

By Mr. ROCKEFELLER:

S. 1996. A bill to amend title XVIII of the Social Security Act to provide for uniform coverage of anticancer drugs under the Medicare Program, and for other purposes; to the Committee on Finance.

MEDICARE CANCER COVERAGE IMPROVEMENT ACT

• Mr. ROCKEFELLER. Mr. President, I am pleased to rise today to introduce the Medicare Cancer Coverage Improvement Act of 1991. This bill is intended to ensure that Medicare beneficiaries, who are more frequently afflicted with cancer, receive the state-of-the-art care they deserve. This goal can be achieved at relatively modest cost to the Medicare Program, and in a way that contributes to ongoing progress against the disease.

While significant headway has been made in recent years in the diagnosis and treatment of cancer, the full benefits of these advances have not always been realized by patients, particularly by Medicare beneficiaries. This legislation addresses three obstacles that stand in the way of senior citizens receiving the best available care: coverage of off-label uses of anticancer drugs, coverage of oral anticancer therapies, and coverage of patient-care costs associated with clinical trials of new cancer therapies.

First, the bill establishes a uniform standard for coverage of so-called off-label or unlabeled uses.

Medicare currently covers the cost of anticancer chemotherapy drugs administered by a physician, but coverage is unreliable because the Health Care Financing Administration [HCFA] allows its fiscal agents, or carriers, too much discretion with respect to uses of the drugs which are off-label, or different from a specific use approved by the Food and Drug Administration [FDA]. Both the FDA and HCFA officially recognize that physicians may appropriately prescribe FDA-approved drugs for these so-called off-label indications. In fact, studies show that half or more of the uses of anticancer drugs are for off-label indications. A finding that is not unexpected in light of the rapidly evolving nature of cancer treatment.

Although Medicare carrier guidelines expressly authorize coverage of medically appropriate unlabeled indications, many carriers are reluctant to accept them. As a result, Medicare beneficiaries are deprived of the most up-to-date treatment, physicians and patients are unfairly disadvantaged, and progress against cancer is undermined.

There is no scientific or medical basis for allowing such decisions to vary among the more than 50 Medicare carriers. The resulting chaos has been criticized by Government agencies, such as the FDA, the National Cancer Institute [NCI], the National Committee to Review Current Procedures for Approval of New Drugs for Cancer and AIDS and, most recently, the General Accounting Office [GAO].

This past September, The GAO released a study of off-label use of cancer drugs. Subtitled "Reimbursement Policies Constrain Physicians in the Choice of Cancer Therapies," this report found that Medicare's unreliable and inconsistent coverage of accepted off-label uses of cancer drugs forced oncologists to alter their preferred treatments, therefore depriving their patients of the best available care. The GAO found, too, that denial of coverage for such uses may actually increase the cost of cancer therapy, as physicians resort to hospital treatment—where accepted off-label uses are more consistently reimbursed—solely to circumvent the restrictions imposed by HCFA's reimbursement policies. The GAO concluded that it was essential for Medicare to develop a policy that would ensure uniform and consistent coverage decisions.

The Medicare Program itself is not unmindful of the hardship caused by the lack of a uniform coverage policy. In January 1989, HCFA initiated a rulemaking on coverage determinations. Nearly 2 years later, however, that rule has yet to be published in final form. Meanwhile, as the GAO reported, Medicare beneficiaries and their physicians continue to suffer inconsistent results because of HCFA's inaction, and every day of delay deprives beneficiaries of access to potentially life-saving treatment.

This bill would resolve the matter by requiring Medicare to cover any unlabled indication of an FDA-approved drug that has been accepted for inclusion in major medical compendia or that appears in peer-reviewed medical literature. Carrier discretion with respect to coverage decisions on off-label uses would be eliminated.

While I am still awaiting a CBO cost estimate, the cost of this provision should be minimal since most off-label uses are already covered under Medicare. The amendment would simply apply on a uniform basis what HCFA already officially recognizes as its policy. Additionally, administrative costs for the carriers should actually decline somewhat, as a result of having coverage determinations made centrally.

Second, the bill provides for coverage of oral anticancer drugs that can be substituted for an injectable version of the same chemical ingredient.

Most anticancer chemotherapy administered by physicians are covered by the Medicare Program as incident to physicians' services. A few anticancer drugs are available in oral dosage form, but because Medicare does not reimburse for outpatient prescription drugs, oral doses are not covered. In European countries, where health coverage is more comprehensive and outpatient drug benefits are standard, anticancer drugs which are available in both oral and injectable dosage form are used predominantly in oral form. In the United States, where reimbursement policy favors physician-administered drugs, the reverse is true, with injectable drugs being used much more frequently than oral alternatives.

Thus, Mr. President, reimbursement policy—and not science—is clearly driving clinical decisions in this country. This approach is unacceptable, both for individual patients and overall health policy. In the short term, it deprives patients and their physicians of an effective treatment option, and one which can yield immediate savings to the Medicare Program by avoiding some of the costs associated with administering chemotherapy. In the long-term, this reimbursement-driven approach to treatment could actually retard the development of new therapies which do not fit squarely within Medicare reimbursement criteria. We should be developing reimbursement policies that are not only cost effective, but that also encourage technological advances and permit patients to realize the full advantage of those gains.

Mr. President, my bill would take a significant step toward achieving that goal by extending Medicare coverage to any oral anticancer drug which is the same chemical entity as a drug already covered by Medicare when injected by a physician. Physicians would thus have additional treatment options, and their patients would enjoy the flexibility to receive anticancer treatment at home rather than being forced to travel to a doctor's office or a hospital. This is particularly important for seniors in West Virginia who, like others who live in rural areas, often drive long distances to be treated by a cancer specialist.

Expanding the range of treatment options reimbursable by Medicare could produce cost-savings to the program as well. Obviously, use of an oral drug would avoid some costs of chemotherapy administration. In addition, as the GAO recently concluded, there could also be other, less direct savings. By expanding the range of reimbursable outpatient treatment options available to physicians, we could avoid situations where a patient is admitted to a hospital simply to receive a course of treatment that is not covered in other settings.

Finally, the bill directs the Secretary of Health and Human Services to study the costs of patient care for Medicare beneficiaries enrolled in cancer treatment clinical trials and to develop criteria for such coverage.

Mr. President, Medicare does not, as it should not, pay for services which are not medically reasonable and necessary. Unfortunately, this has been interpreted to exclude from coverage services which are experimental or investigational, and is used by the Medicare Program to deny coverage for patient care for beneficiaries enrolled in clinical trials. When the clinical trial involves an investigational drug, the drug is provided free of charge by the sponsoring company, but the patient remains liable for a variety of costs, including hospital and physician charges. If the Medicare Program refuses to cover these costs, the beneficiary may face many thousands of dollars of unreimbursed expense, or go without treatment altogether.

Denial of coverage for investigational treatment is particularly problematic for cancer patients. As the National Cancer Institute has frequently noted, treatment provided under a clinical protocol is state-of-the-art cancer therapy. Perhaps more than in any other disease category, cancer patients are likely to receive treatment under a protocol, especially if the treatment is provided in one of the many cancer centers across the country which deal almost exclusively with cancer. Often, the protocol under investigation represents only a minor variation from standard treatment and can in no way fairly be characterized as experimental in the usual sense of that term.

Even when the investigational treatment is more clearly a variation from standard therapy, ethical guidelines for clinical investigations require a demonstration that standard therapy would not be expected to benefit the patient. Thus, investigational therapy is, almost by definition, at least as good as standard therapy. In most instances, it is accurate to say that investigational therapy is the best available treatment.

Mr. President, it is time to develop a rational policy to make sure Medicare beneficiaries are not unfairly denied access to the best available care. To this end, the bill requires the Secretary to study the feasibility of Medicare coverage of patient care costs associated with enrollment in clinical trials that meet quality assurance and ethical standards and to report his recommendations to the Congress within 2 years.

The report is to focus on the additional cost, if any, of such coverage to the Medicare program; the extent to which these investigations represent the best available treatment for cancer patients; whether progress in developing new cancer treatments would be assisted by Medicare coverage of investigational cancer treatments; and whether there should be special criteria for the admission of Medicare beneficiaries, on account of their age or physical condition, to clinical trials.

Mr. President, I am confident that these relatively minor changes in Medicare policy can result in significant improvements in the care available to cancer patients. Reimbursement policies all too often prove virtually insurmountable obstacles in the battle against cancer. These policies can improperly influence treatment decisions in a way that not only is harmful to cancer patients, but increases costs as well. By eliminating undesirable and unnecessary aspects of those policies, we can respond to the needs of individual cancer patients and at the same time make important strides toward conquering this disease.

Mr. President, I ask unanimous consent that a summary of the bill and the text of the bill be printed in the RECORD.

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

S. 1996

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Cancer Coverage Improvement Act of 1991".

SEC. 2. UNIFORM MEDICARE COVERAGE OF ANTICANCER DRUGS.

(a) IN GENERAL.—Section 1861(t) of the Social Security Act (42 U.S.C. 1395x(t)) is amended—

(1) be inserting "(1)" after "(t)";

(2) by striking "(m)(5) of this section" and inserting "(m)(5) and paragraph (2)"; and

(3) by adding at the end thereof the following new paragraph:

"(2)(A) For purposes of paragraph (1) the term 'drugs' includes any drugs or biologics used in an anticancer chemotherapeutic regimen for a medically accepted indication as described in subparagraph (B).

"(B) The term 'medically accepted indication' means any use of a drug included under paragraph (1) which is approved by the Food and Drug Administration, which appears in peer-reviewed medical literature, or which is included (or approved for inclusion) in one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations and the United States Pharmacopoeia-Drug Information.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to items furnished on or after January 1, 1992.

SEC. 3. COVERAGE OF CERTAIN SELF-ADMINISTERED ANTICANCER DRUGS.

(a) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (O);

(2) by adding "and" at the end of subparagraph (P); and

(3) by adding at the end the following new subparagraph:

"(Q) oral drugs prescribed for use in an anticancer chemotherapeutic regimen, for a medically indicated use (as described in subsection (t)(2)), if such drugs contain the same

active ingredient that would be covered pursuant to subparagraph (A) or (B);".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to items furnished on or after January 1, 1992.

SEC. 4. STUDY OF MEDICARE COVERAGE OF PATIENT CARE COSTS ASSOCIATED WITH CLINICAL TRIALS OF NEW CANCER THERAPIES.

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of the effects of expressly covering the patient care costs for medicare beneficiaries enrolled in clinical trials of new cancer therapies, where the protocol for the trial has been approved by the National Cancer Institute or meets similar scientific and ethical standards, including approval by an Institutional Review Board. The study shall include—

(1) an estimate of the cost of such coverage, taking into account the extent to which medicare currently pays for such patient care cost in practice;

(2) an assessment of the extent to which such clinical trials represent the best available treatment for the patients involved and of the effects of participation in the trials on the health of such patients;

(3) an assessment of whether progress in developing new anticancer therapies would be assisted by medicare coverage of such patient care costs; and

(4) an evaluation of whether there should be special criteria for the admission of medicare beneficiaries (on account of their age or physical condition) to clinical trials for which medicare would pay the patient care costs.

(b) REPORT—The Secretary of Health and Human Service shall submit a report on the study required by subsection (a), including recommendations as to the coverage of patient care cost of medicare beneficiaries enrolled in clinical trials of new cancer therapies, to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives, not later than 2 years after the date of enactment of this Act.

MEDICARE CANCER COVERAGE IMPROVEMENT ACT OF 1991

UNIFORM MEDICARE COVERAGE OF ANTICANCER DRUGS

Current Law: The Medicare program covers items and services that are "reasonable and necessary." A drug prescribed for an "off-label" indication (i.e., a use other than those specifically approved by the Food and Drug Administration) is considered reasonable and necessary if the unapproved use in accepted in the medical community. Medicare carriers determine whether a particular indication is medically accepted.

Proposal: Any use of an FDA-approved anticancer drug that is approved by FDA, appears in the peer-reviewed medical literature, or is included in one or more of the three major medical compendia, is considered a medically accepted indication and must be covered.

COVERAGE OF CERTAIN SELF-ADMINISTERED ANTICANCER DRUGS

Current Law: Medicare covers injectable drugs administered on an outpatient basis as incident to a physician's service. Medicare does not cover self-administered outpatient prescription drugs.

Proposal: An oral drug prescribed for a medically accepted indication in an anticancer regimen is covered if the drug contains the same active ingredient as a drug that would be covered if administered as incident to a physician's service.

STUDY OF MEDICARE COVERAGE OF PATIENT CARE COSTS ASSOCIATED WITH CLINICAL TRIALS OF CANCER DRUGS

Current Law: None.

Proposal: The Secretary of Health and Human Services shall study the costs of patient care for Medicare beneficiaries enrolled in clinical trials of new cancer therapies (where the protocol for the trial has been approved by the National Cancer Institute or meets similar scientific and ethical standards, including approval by an Institutional Review Board) and develop criteria for such coverage.●

By Mr. KASTEN:

S. 1997. A bill to amend the Internal Revenue Code of 1986 to exclude from the social security tax on self-employment income certain amounts received by insurance salesmen after retirement; to the Committee on Finance.

EXCLUSION OF CERTAIN AMOUNTS RECEIVED BY INSURANCE AGENTS AFTER RETIREMENT

● Mr. KASTEN. Mr. President, today I am introducing legislation designed to restore fundamental fairness for retired insurance salesmen. I am sure that it would come as a surprise to many of my colleagues that former insurance salesmen are subject to the 15.3 percent self-employment tax on the retirement payments they receive upon separation from their employer.

One reason this tax treatment would come as a surprise to my colleagues is that it is not the result of congressional action. It is instead the result of an IRS interpretation of what constitutes self-employment income. IRS Notice 90-72 titled "Certain Payments by Retired Insurance Agents" states that retired insurance salespersons must continue to pay self-employment tax on amounts paid to them after retirement.

The stated rationale for the IRS' treatment of the payments in question is that under current law, no provision excludes these payments from taxation under the Self-Employment Contributions Act [SECA]. However, the payments are clearly retirement income, not self-employment income. Upon receipt of this income, the retired salesperson is no longer engaged in the trade or business of selling insurance. He or she is no longer receiving commissions from previously sold policies, but is instead receiving payments based on a percentage of commissions, indicating a clear change of employment status.

Despite clear evidence to the contrary, the IRS continues to insist that payments received by retired insurance agents from their former employers is self-employment income. It is therefore necessary for Congress to take action and make clear that the payments in question should be excluded from the 15.3-percent self-employment tax. My legislation would do precisely that. I invite my colleagues to join me in supporting this important clarification of the law.

I am pleased to say that my colleague from Wisconsin, Representative JIM SENSENBRENNER has introduced this legislation in the House of Representatives. I ask unanimous consent that the text of the bill be printed in the RECORD following my remarks.

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

S. 1997

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCLUSION FROM SELF-EMPLOYMENT TAX FOR CERTAIN AMOUNTS RECEIVED BY INSURANCE SALESMEN AFTER RETIREMENT.

(a) INTERNAL REVENUE CODE.—Subsection (a) of section 1402 of the Internal Revenue Code of 1986 (defining net-earnings from self-employment) is amended by striking "and" at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting "; and", and by inserting after paragraph (15) the following new paragraph:

"(16) there shall be excluded amounts received by a former insurance salesman after retirement if—

"(A) such amounts are deferred or renewal commissions on policies sold by such salesman before retirement or are computed by reference to commissions received by such salesman before retirement on such policies, and

"(B) such salesman was not an employee for purposes of chapter 21 with respect to the sale of such policies.".

(b) SOCIAL SECURITY ACT.—Subsection (a) of section 211 of the Social Security Act (defining net-earnings from self-employment) is amended by striking "and" at the end of paragraph (13), by striking the period at the end of the paragraph (14) added by section 3044 of the Technical and Miscellaneous Revenue Act of 1988 and inserting a semicolon, by redesignating the paragraph (14) added by section 1101B of such Act as paragraph (15), by striking the period at the end of such paragraph (15) and inserting "; and", and by inserting after such paragraph (15) the following new paragraph:

"(16) There shall be excluded amounts received by a former insurance salesman after retirement if—

"(A) such amounts are deferred or renewal commissions on policies sold by such salesman before retirement or are computed by reference to commissions received by such salesman before retirement on such policies, and

"(B) such salesman was not an employee for purposes of chapter 21 of such Code with respect to the sale of such policies."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.●

By Mr. EXON:

S. 1998. A bill to adopt the Airline Consumer Protection and Competition Emergency Commission Act of 1991; to the Committee on Commerce, Science, and Transportation.

AIRLINE CONSUMER PROTECTION AND COMPETITION EMERGENCY COMMISSION ACT

Mr. EXON. Mr. President, I rise to introduce legislation creating a special blue-ribbon commission to analyze the economic state of the U.S. Air passenger industry and aircraft manufacturing industry. The commission is to make recommendations to the Presi-

dent and Congress for national policy changes in these areas. This special temporary blue-ribbon commission is needed to help find ways to bring a halt to the disastrous trends in the U.S. airline industry toward fewer carriers, less competition, and a future unregulated monopoly dominated by only a few big carriers. In addition, concerns have increased recently due to proposed foreign purchases in the aircraft manufacturing sector.

A concentrated monopoly in the air passenger industry would be bad for American free enterprise, bad for consumers, and bad for our Nation as a whole. Continued airline bankruptcies leaving fewer and fewer carriers will inevitably lead in the long run to monopoly conditions and reregulation of rates and routes as in the days prior to the 1978 Airline Deregulation Act. Perhaps the horse is already out of the barn and economic trends in the industry are already too far along to prevent that result. However, I believe that before regulation of rates and routes would be restored, we must try to do all we can to make competition work as intended by the supporters of the 1978 act. I view the accelerating reduction in the number of major domestic carriers as an emergency matter of national concern which justifies the creation of this blue ribbon commission. Ironically, the continued loss of carriers is occurring at the same time that growth is predicted well into the next century for air passengers and air cargo. Midway Airlines just recently became the latest victim to fold and too many other U.S. carriers are in some form of bankruptcy, or close to it.

One proposed so-called solution deserves particular comment. Globalization of America's airline industry is mentioned and proposals have been made in the Senate and by the administration to increase current limits on foreign investments in the United States by U.S. carriers. In other words, since we cannot keep our house in order, we are going to be relying more and more on foreigners by allowing them to buy very close to controlling interests, if not controlling interests, in some of our basic commercial carriers.

In my view, it sounds like that would only more and more and more take us down the path toward doing to our Nation's domestic airline industry what has been done to our domestic electronics industry, domestic auto industry, and too many other industries, that is, to increase the foreign owned and controlled market share of a basic industry in our Nation. It is ironic that an administration so opposed to U.S. Government support for domestic industries would even contemplate increased foreign ownership of domestic airlines, possibly including ownership by foreign airlines, since many foreign airlines receive considerable protection and support from their own governments, which is not the case here.

The issue of increased foreign control is also a major concern in the aircraft manufacturing industry.

Increased foreign ownership and control of our Nation's very important airline industry is not a solution and not a result that I want to see happen. We are looking, Mr. President, at the short range, rather than taking the long view of what is best for America. Not only is our Nation's economic security at stake. Major U.S. carriers participate in national defense by making parts of their fleet available to the civil reserve air fleet which provides passenger aircraft to the Department of Defense during times of emergency need, such as the recent massive airlift of troops to Saudi Arabia after Iraq's invasion of Kuwait. Would foreign-owned, controlled, or dominated carriers in the United States be as reliable allies in some future Kuwait-style troop airlift as were our Nation's airlines during this last operation? That was not a concern during the airlift of troops to Saudi Arabia and I do not want to see our U.S. military have to worry about such questions in the future.

The current state of the U.S. airline and aircraft manufacturing industries is the result of a decade of romance with so-called "free-market" theories. I submit it is time to put slavery to theory aside and put American interests first.

Finally, I also wish to salute Mr. William Shea, who is the director of the University of Nebraska at Omaha's Aviation Institute. Bill has sent warning signals about the U.S. airline and aircraft industries and was an early proponent of creating this special Commission.

Mr. President, I look forward to working with my colleagues to obtain swift approval for this bill.

I hope that all will recognize and realize that the announcement made today that a major defense contractor headquartered in St. Louis, MO, McDonnell Douglas, has announced that they have agreed to the Government or interests in Taiwan to have 40-percent control of the manufacturing facilities of Lockheed in commercial aviation.

It was also reported on the news today that the Taiwan Government and Taiwan investors are interested in making more and more commercial airlines in Taiwan, a continuation of the shipment of jobs from America overseas which we have been doing in wholesale lots, unmindfully, in my opinion. In addition to that, they are also interested in a future possible entry into more high-technology fields with regard to military aircraft. And that, as reported in the news today, is one of the things that is behind this takeover.

Yesterday, I signed a letter, initiated by Senator BINGAMAN, and sent it to the President of the United States with about 30 other U.S. Senators affixing their signatures, calling on the President to take a close look at this proposal with regard to McDonnell Douglas to see whether or not the President does not believe that it is in the national security interests of the United States, whether Exon-Florio, as an important part of the recent omnibus trade bill, should not be invoked here to stop this kind of a most serious deterioration of the United States of America's aircraft industry.

It seems to me, Mr. President, that this is the time for us to stand up and take a stand. If we do not want to stand up and make a stand right now, then at least admit, at least concede, at least agree that we simply do not care and that we are going ahead in this madness to find one more major industry in the United States, the aircraft production industry, which we have led in from the very beginning of commercial aircraft manufacturers, going down the tube, as have so many of the other industries that I have just mentioned.

Mr. President, I ask unanimous consent that the bill that I currently send to the desk be printed in the RECORD. I also indicate at this time, Mr. President, that because of the critical nature and the decisions that have to be made now by the President and the Congress, that we better ask for some outside professional help to tell the President and the Congress what these experts see is the answer to the problem that is about to come crashing down on us, if it is not already here.

Mr. President, I look again to working with my colleagues to obtain swift approval of this bill in some manner. And if appropriate vehicles come along, I intend to offer this as an amendment to an appropriate vehicle on the floor of the Senate.

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

S. 1998

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the Airline Consumer Protection and Competition Emergency Commission Act of 1991.

SEC. 2. ESTABLISHMENT OF COMMISSION.

There is hereby established the Emergency Commission on Airline Consumer Protection and Competition (hereafter in this Act referred to as the "Commission"). Appointments to the Commission shall be made within 30 days of the date of enactment of this Act.

SEC. 3. PURPOSE.

The purpose of this Act is to provide for an assessment of the adverse condition of the United States air passenger industry and aircraft manufacturing industry and to provide for recommendations to be made to the President and the Congress.

SEC. 4. MEMBERSHIP OF COMMISSION.

(a) COMPOSITION.—The Commission shall be composed of seven members who shall be appointed as follows:

(1) one member to be appointed by the President.

(2) three members to be appointed by the Committee on Commerce, Science, and Transportation of the Senate.

(3) three members to be appointed by the Committee on Public Works and Transportation of the House of Representatives.

(b) SECTORS REPRESENTED.—Appointments shall be coordinated so that one or more of the members of the Commission are drawn from business, labor, academia, and government and are knowledgeable of the U.S. air passenger industry.

(c) LEADERSHIP.—The Commission shall elect a Chairman and Vice Chairman.

(d) QUORUM.—Five members shall constitute a quorum.

(e) EFFECT OF VACANCIES.—Any vacancy on the Commission shall not affect its powers, but shall be filled in the manner in which the original appointment was made.

(f) PROHIBITION ON COMPENSATION.—Members of the Commission shall receive no additional pay, allowances, or benefits by reason of their service on the Commission. Members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service, to the extent such funds are available for such expenses.

SEC. 5. FUNCTIONS OF THE COMMISSION.

The Commission shall assess the state of the airline industry, shall explore the full implications of foreign ownership of U.S. carriers, and shall make specific recommendations to the President and the Congress concerning what government policies should be adopted: to improve the competitive environment; to retard the flow of carrier bankruptcies and accompanying loss of jobs; to assure the continued ownership and control of U.S. air carriers by U.S. citizens; to promote adequate levels of competition and service with reasonable fares in all geographical areas of the nation; and to stabilize the work environment of airline industry employees.

The Commission shall also assess the state of the U.S. aircraft manufacturing industry and make recommendations which would help foster a healthy, competitive U.S.-owned and controlled industry.

SEC. 6. REPORT.

Not later than 3 months after the date initial appointments to the Commission are completed, the Commission shall submit a report to the President and the Congress on its activities and containing its recommendations.

SEC. 7. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may, for the purpose of carrying out this Act, hold such hearings and sit and act at such times and places, as the Commission may find advisable.

(b) RULES AND REGULATIONS.—The Commission may adopt such rules and regulations as may be necessary to establish its procedures and to govern the manner of its operations, organization, and personnel.

(c) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) The Commission may request from the head of any Federal agency or instrumentality such information as the Commission may require for the purpose of this Act. Each such agency or instrumentality shall, to the extent permitted by law and subject to the exceptions set forth in section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), furnish such information to the Commission, upon request made by the Chairman of the Commission.

(2) Upon request of the Chairman of the Commission, the head of any Federal agency or instrumentality shall, to the extent reasonably possible and practicable.

(A) make any of the facilities and services of such agency or instrumentality available to the Commission; and

(B) detail personnel of such agency or instrumentality to the Commission on a nonreimbursable basis, to assist the Commission in carrying out its duties under this Act, except that any expenses of the Commission incurred under this subparagraph shall be subject to the limitation on total expenses set forth in section 8(b).

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other federal agencies.

(e) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts with States agencies, private firms, institutions, and individuals for the purpose of conducting research or surveys necessary to enable the Commission to discharge its duties under this Act, subject to the limitation on total expenses set forth in section 8(b).

(f) STAFF.—Subject to such rules and regulations as may be adopted by the Commission, the Chairman of the Commission (subject to the limitation on total expenses set forth in section 8(b) shall have the power to appoint, terminate, and fix the compensation (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision, or of any other provision of law, relating to the number, classification, and General Schedule rates) of an Executive Director, and of such additional staff as the Chairperson deems advisable to assist the Commission, at rates not to exceed a rate equal to the maximum rate for GS-15 or above of the General Schedule under section 5332 of such title.

(g) ADVISORY COMMITTEE.—The Commission shall be considered an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 8. EXPENSES OF COMMISSION.

(a) AVAILABILITY OF FUNDS.—Any expenses of the Commission shall be paid from such funds as may be available to the President.

(b) LIMITATION ON EXPENSES.—The total expenses of the Commission (excluding salaries) shall not exceed $500,000.

(c) AUDITING REQUIREMENT.—Before the termination of the Commission, the Comptroller General of the United States shall audit the financial books and records of the Commission to determine that the limitation on expenses has been met.

SEC. 9. TERMINATION.

The Commission shall cease to exist 9 months after the date of enactment of this Act.

By Mr. SIMPSON (for himself, Mr. WALLOP, Mr. HATCH, and Mr. BURNS):

S. 1999. A bill to amend the Uniform Time Act of 1966 to alter the time period for daylight saving time; to the Committee on Commerce, Science, and Transportation.

DAYLIGHT SAVING TIME AMENDMENTS ACT

Mr. SIMPSON. Mr. President, I introduce a bill to extend the end of daylight saving time from the final Sunday in October to the first Sunday in November. I am pleased that my senior colleague Senator WALLOP, Senator HATCH, and Senator BURNS have cosponsored this measure. It is also one other Senator have been involved in including the majority leader over the years. This proposal is the remarkable result of an extraordinary "grass roots" effort in the most real sense. A very fine schoolteacher in Wyoming had interested her delightful group of third-grade students in the workings of our political system—enough to get them to lobby heavily for an addition of one week to daylight saving time!

This fine Wyoming educator, Sharon Rasmussen, has also succeeded in acquiring an endorsement of this extension by the National Education Association, through a resolution which they passed recently by voice vote, with no one speaking in opposition. She is an energetic, spirited, and persuasive teacher, and she has done a tremendous job of demonstrating to her pupils that democracy truly does function from the ground up. Thus I am pleased to introduce this legislation on their behalf.

For most of the year, we are a Nation living largely out of step with the natural duration of the day. Virtually every American retires to bed several hours after the sun has set, and millions also do not rise until after daylight has broken.

In this time of concern about energy conservation, it seems curious that we do not make greater use of the most cheaply available form of light—sunlight. As Benjamin Franklin once wrote,

> (The sun) gives light as soon as he rises * * * had I not been reawakened so early in the morning I would have slept * * * by the light of the sun, and in exchange have lived the following night by candle-light * * * the latter being a much more expensive light than the former.

The economics of the matter remain equally valid today, excepting that our energy and budget situations require us to be even more diligent concerning energy economy than the Nation in Franklin's time had cause to be.

There are also some compelling safety reasons to delay the end of daylight savings time until the first week of November. The many children who go trick-or-treating on Halloween night would also be well served by that extra hour of daylight. Thus you are aware of the energy and impetus behind this legislative effort from these fine third graders of Sheridan, WY.

Mr. President, I ask that this measure be referred to the appropriate committee, and I ask my colleagues, too, for their support.

By Mrs. KASSEBAUM (for herself, Mr. SIMON, Mr. LUGAR, Mr. DECONCINI, Mr. MCCONNELL, Mr. ROBB, Mr. HATFIELD, Mr. KENNEDY, Mr. MOYNIHAN, and Mr. D'AMATO):

S.J. Res. 234. Joint resolution expressing the sense of the Congress regarding the Government of Kenya's November 14 through 16, 1991, suppression of the democratic opposition and suspending economic and military assistance for Kenya; to the Committee on Foreign Relations.

SITUATION IN KENYA

Mrs. KASSEBAUM. Mr. President, I rise today to introduce a joint resolution regarding the Government of Kenya's recent crackdown on the democratic opposition.

Over the past few years, I have become increasingly concerned by the repressive policies pursued by the Government of Kenya. President Moi has repeatedly seized and detained those who speak out against his government. Democratic activists have been continually harassed. The Kenyan Government has banned opposition magazines and journals. There have been serious questions raised regarding the independence of the judiciary.

In July 1990, the Government of Kenya engineered a violent and brutal crackdown on the democratic forces in Kenya. By the end of the month, security forces had killed at least 23 civilians. Over 1,000 demonstrators were arrested.

Last week, the Kenyan Government vigorously renewed its policy of repression. On November 14, President Moi arrested seven leading opposition leaders, including Mr. Gitobu Imanyara and Mr. Oginga Odinga. Two days later, the Government violently suppressed an opposition rally in Nairobi, dispersing several thousand peaceful demonstrators. Five more well-known democratic activists were arrested.

Many of us had hoped that the Government of Kenya was moving toward greater freedom and respect for human rights. President Moi had released all political detainees. The Kenyan courts had unbanned elements of the opposition press. For this reason, this most recent crackdown is deeply troubling.

Mr. President, in the past 2 years, three former United States allies in Africa—Liberia, Somalia, and Zaire—have fallen apart. In all three countries, the United States supported repressive dictatorships which ignored basic human rights. Now, their economies have been destroyed. Millions have been displaced from their homes. Thousands have been killed. Food supplies are scarce.

Kenya has not yet reached this point. But I fear that the repressive policies of President Moi put Kenya on the road to political instability, economic decline, and chaos.

Mr. President, this resolution strongly condemns the arrest of the Kenyan opposition leaders and the suppression of the November 16 rally. It urges President Moi to release those arrested and to drop the charges filed against them. It calls upon the Kenyan Government to permit the free expression of political views.

The resolution commends the United States Government for its actions in support of democracy in Kenya. It calls upon the United States to ensure that its development program bears relation to Kenya's progress toward an open political system and respect for human rights. It urges the President to reasses immediately whether to continue the International Military Educational Training Program to Kenya, given the deteriorating situation in that country.

The resolution also suspends United States military aid and economic support funds to Kenya, including the aid in the pipeline. These programs could resume if Kenya:

Releases political detainees and ends the prosecution of individuals for the expression of their political beliefs;

Ceases the physical abuse or mistreatment of prisoners;

Restores judicial independence; and

Restores freedom of expression.

These restrictions are very similar both to the current law and to the fiscal year 1992 Foreign Aid Authorization Act. However, whereas the foreign aid legislation only included the fiscal year 1990 and 1991 pipeline, this resolution would condition the entire Kenya security assistance pipeline, cutting all military assistant immediately.

Mr. President, I believe the situation has reached a very serious point. This resolution sends a clear and firm message to President Moi:

We are deeply worried about the future of your nation; we believe that the repressive policies of your government threaten the economic success and political stability of Kenya; and until the human rights situation improves, the United States will not send any military aid or economic support funds to your government.

ADDITIONAL COSPONSORS

S. 21

At the request of Mr. CRANSTON, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 21, a bill to provide for the protection of the public lands in the California desert.

S. 141

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 141, a bill to amend the Internal Revenue Code of 1986 to extend the solar and geothermal energy tax credits through 1996.

S. 154

At the request of Mr. NICKLES, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 154, a bill to amend the Internal Revenue Code of 1986 to impose a fee on the importation of crude oil and refined petroleum products.

S. 284

At the request of Mr. BRADLEY, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 284, a bill to amend the Internal Revenue Code of 1986 with respect to the tax treatment of payments under life insurance contracts for terminally ill individuals.

S. 474

At the request of Mr. DECONCINI, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 474, a bill to prohibit sports gambling under State law.

S. 574

At the request of Mr. CRANSTON, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 574, a bill to amend the Civil Rights Act of 1964 to prohibit discrimination on the basis of affectional or sexual orientation, and for other purposes.

S. 581

At the request of Mr. BOREN, the names of the Senator from Colorado [Mr. BROWN], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of S. 581, a bill to amend the Internal Revenue Code of 1986 to provide for a permanent extension of the targeted jobs credit, and for other purposes.

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 581, supra.

S. 757

At the request of Mr. LEAHY, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 757, a bill to amend the Food Stamp Act of 1977 to respond to the hunger emergency afflicting American families and children, to attack the causes of hunger among all Americans, to ensure an adequate diet for low-income people who are homeless or at risk of homelessness because of the shortage of affordable housing, to promote self-sufficiency among food stamp recipients, to assist families affected by adverse economic conditions, to simplify food assistance programs' administration, and for other purposes.

S. 775

At the request of Mr. DECONCINI, the names of the Senator from North Carolina [Mr. SANFORD] and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of S. 775, a bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

S. 843

At the request of Mr. BREAUX, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 843, a bill to amend title 46, United States Code, to repeal the requirement

that the Secretary of Transportation collect a fee or charge for recreational vessels.

S. 869

At the request of Mr. RIEGLE, his name was added as a cosponsor of S. 869, a bill to amend title 38, United States Code, to improve the availability of treatment of veterans for post-traumatic stress disorder; and for other purposes.

At the request of Mr. DECONCINI, the names of the Senator from Vermont [Mr. LEAHY], the Senator from North Carolina [Mr. SANFORD], and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of S. 869, supra.

S. 879

At the request of Mr. DASCHLE, the name of the Senator from Idaho [Mr. CRAIG] 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. 1100

At the request of Mr. KERRY, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 1100, a bill to authorize the Secretary of Housing and Urban Development to provide grants to urban and rural communities for training economically disadvantaged youth in education and employment skills and to expand the supply of housing for homeless and economically disadvantaged individuals and families.

S. 1112

At the request of Mr. HOLLINGS, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 1112, a bill to establish a commission to advise the President on proposals for national commemorative events.

S. 1157

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1157, a bill to amend the Internal Revenue Code of 1986 to allow the energy investment credit for solar energy and geothermal property against the entire regular tax and the alternative minimum tax.

S. 1357

At the request of Mr. BREAUX, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 1357, a bill to amend the Internal Revenue Code of 1986 to permanently extend the treatment of certain qualified small issue bonds.

S. 1455

At the request of Mr. GRAHAM, the names of the Senator from New York [Mr. D'AMATO], the Senator from Missouri [Mr. BOND], the Senator from Alabama [Mr. SHELBY], and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of S. 1455, a bill entitled the "World Cup USA 1994 Commemorative Coin Act."

S. 1522

At the request of Mr. BOREN, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 1522, a bill to amend the Internal Revenue Code of 1986 with respect to the treatment by cooperatives of gains or losses from sale of certain assets.

S. 1599

At the request of Mr. BRADLEY, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1599, a bill to extend nondiscriminatory (most-favored-nation) treatment to Estonia, Latvia, and Lithuania.

S. 1623

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1623, a bill to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

S. 1726

At the request of Mr. DIXON, the names of the Senator from Indiana [Mr. LUGAR] and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of S. 1726, a bill to amend the Immigration and Nationality Act to restore authority in courts to naturalize persons as citizens.

S. 1738

At the request of Mr. DASCHLE, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 1738, a bill to prohibit imports into the United States of meat products from the European Community until certain unfair trade barriers are removed, and for other purposes.

S. 1793

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1793, a bill to restrict United States assistance for Serbia or any part of Yugoslavia controlled by Serbia until certain conditions are met, and for other purposes.

S. 1810

At the request of Mr. ROCKEFELLER, the names of the Senator from Iowa [Mr. HARKIN], and the Senator from Georgia [Mr. NUNN] were added as cosponsors of S. 1810, a bill to amend title XVIII of the Social Security Act to provide for corrections with respect to the implementation of reform of payments to physicians under the medicare program, and for other purposes.

S. 1827

At the request of Mr. BOND, the names of the Senator from Massachusetts [Mr. KERRY] and the Senator from Kentucky [Mr. FORD] were added as cosponsors of S. 1827, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the White House.

S. 1830

At the request of Mr. WOFFORD, the names of the Senator from Colorado [Mr. WIRTH], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Ohio [Mr. METZENBAUM], and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 1830, a bill to require Senators and Members of the House of Representatives to pay for medical services provided by the Office of the Attending Physician, and for other purposes.

S. 1833

At the request of Mr. PRESSLER, the names of the Senator from Utah [Mr. HATCH], the Senator from Vermont [Mr. JEFFORDS], the Senator from Illinois [Mr. DIXON], and the Senator from Connecticut [Mr. LIEBERMAN] were added as cosponsors of S. 1833, a bill extending nondiscriminatory treatment (most-favored-nation treatment) to the products of Estonia, Latvia, and Lithuania, and for other purposes.

S. 1866

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1866, a bill to promote community based economic development and to provide assistance for community development corporations, and for other purposes.

S. 1886

At the request of Mr. MCCONNELL, the names of the Senator from California [Mr. SEYMOUR], the Senator from Nevada [Mr. REID], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 1886, a bill to delay until September 30, 1992, the issuance of any regulations by the Secretary of Health and Human Services changing the treatment of voluntary contributions and provider-specific taxes by States as a source of a State's expenditures for which Federal financial participation is available under the Medicaid Program and to maintain the treatment of intergovernmental transfers as such a source.

S. 1901

At the request of Mr. DASCHLE, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1901, a bill to amend title 5, United States Code, to make election day a legal public holiday, with such holiday to be known as "Democracy Day."

S. 1950

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1950, a bill to amend the Internal Revenue Code of 1986 to extend for 1 year certain expiring tax provisions.

S. 1956

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1956, a bill to establish a national program to monitor and assess human exposure to toxic substances, and for other purposes.

S. 1988

At the request of Mr. COHEN, the name of the Senator from Arizona [Mr.

MCCAIN] was added as a cosponsor of S. 1988, a bill to amend title XVIII of the Social Security Act to provide for improved standards to prevent fraud and abuse in the purchasing and rental of durable medical equipment and supplies, and prosthetics and orthotics, and prosthetic devices under the Medicare Program, and for other purposes.

SENATE JOINT RESOLUTION 113

At the request of Mr. LAUTENBERG, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of Senate Joint Resolution 113, a joint resolution designating the oak as the national arboreal emblem.

SENATE JOINT RESOLUTION 176

At the request of Mr. DIXON, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Senate Joint Resolution 176, a joint resolution to designate March 19, 1992, as "National Women in Agriculture Day."

SENATE JOINT RESOLUTION 198

At the request of Mr. AKAKA, the names of the Senator from Michigan [Mr. RIEGLE], the Senator from New Hampshire [Mr. RUDMAN], the Senator from Maryland [Mr. SARBANES], the Senator from Virginia [Mr. WARNER], and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of Senate Joint Resolution 198, a joint resolution to recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II.

SENATE JOINT RESOLUTION 225

At the request of Mr. FOWLER, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Louisiana [Mr. BREAUX], the Senator from North Dakota [Mr. CONRAD], the Senator from New York [Mr. MOYNIHAN], the Senator from Wisconsin [Mr. KOHL], the Senator from Rhode Island [Mr. PELL], the Senator from Colorado [Mr. WIRTH], the Senator from Montana [Mr. BURNS], the Senator from Indiana [Mr. COATS], the Senator from New Mexico [Mr. DOMENICI], the Senator from Iowa [Mr. GRASSLEY], the Senator from Oregon [Mr. PACKWOOD], the Senator from Nevada [Mr. BRYAN], the Senator from Delaware [Mr. BIDEN], the Senator from Arizona [Mr. DECONCINI], the Senator from Ohio [Mr. METZENBAUM], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Iowa [Mr. HARKIN], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Missouri [Mr. BOND], the Senator from New York [Mr. D'AMATO], the Senator from Texas [Mr. GRAMM], the Senator from Utah [Mr. HATCH], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 225, a joint resolution to designate February 3, 1992, through February 9, 1992, as "National Police Officer and Firefighter Recognition Week."

SENATE JOINT RESOLUTION 233

At the request of Mr. BIDEN, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of Senate Joint Resolution 233, a joint resolution to designate the week beginning April 12, 1992, as "National Public Safety Telecommunicators Week."

SENATE CONCURRENT RESOLUTION 57

At the request of Mr. BOREN, the names of the Senator from Nevada [Mr. REID], the Senator from Nebraska [Mr. KERREY], the Senator from Michigan [Mr. LEVIN], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Concurrent Resolution 57, a concurrent resolution to establish a Joint Committee on the Organization of Congress.

SENATE CONCURRENT RESOLUTION 65

At the request of Mr. DECONCINI, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of Senate Concurrent Resolution 65, a concurrent resolution to express the sense of the Congress that the President should recognize Ukraine's independence.

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of Senate Concurrent Resolution 65, supra.

SENATE CONCURRENT RESOLUTION 69

At the request of Mr. CRANSTON, the names of the Senator from Illinois [Mr. SIMON], the Senator from Illinois [Mr. DIXON], the Senator from Colorado [Mr. WIRTH], and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of Senate Concurrent Resolution 69, a concurrent resolution concerning freedom of emigration and travel for Syrian Jews.

SENATE CONCURRENT RESOLUTION 77

At the request of Mr. WALLOP, the name of the Senator from Idaho [Mr. SYMMS] was added as a cosponsor of Senate Concurrent Resolution 77, a concurrent resolution condemning the massacre of East Timorese civilians by the Indonesia military.

SENATE RESOLUTION 211

At the request of Mr. SASSER, the names of the Senator from North Carolina [Mr. SANFORD], and the Senator from Georgia [Mr. FOWLER] were added as cosponsors of Senate Resolution 211, a resolution expressing the sense of the Senate regarding human rights abuses in China against writers and journalists.

SENATE RESOLUTION 213

At the request of Mr. GORE, the names of the Senator from Nebraska [Mr. EXON], the Senator from Hawaii [Mr. INOUYE], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Missouri [Mr. DANFORTH], the Senator from Idaho [Mr. CRAIG], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of Senate Resolution 213, a resolution expressing the sense of the Senate regarding United States policy toward Yugoslavia.

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of Senate Resolution 213, supra.

At the request of Mr. GORE, the name of the Senator from Massachusetts [Mr. KENNEDY] was withdrawn as a cosponsor of Senate Resolution 213, supra.

SENATE RESOLUTION 223

At the request of Mr. PRESSLER, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of Senate Resolution 223, a resolution to support the activities of the Peace Corps in the republics of the former Soviet Union.

SENATE RESOLUTION 225—AMENDING THE STANDING RULES OF THE SENATE

Mr. ROTH submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 225

Resolved, That Senate Resolution 338, agreed to July 23, 1964 (88th Congress, 2d session), is amended as follows:

(1) The first section is amended to read as follows:

"That (a)(1) there is hereby established a permanent select committee of the Senate to be known as the Select Committee on Ethics (referred to in this resolution as the 'Select Committee') consisting of 3 members all of whom shall be private citizens.

"(2)(A) The Majority Leader and the Minority Leader shall each select a member of the Select Committee, both of whom shall be former Members of Congress, preferably former senators.

"(B) The members of the Select Committee designated by the Majority and Minority Leaders shall agree upon and select a third member, who shall be—

"(i) a retired Federal judge, or a retired State judge of at least the appellate court level; and

"(ii) designated as the chairman.

"(b)(1) Members of the Select Committee shall serve a term of 4 years and may not be reappointed, except that the first chairman shall serve a term of 2 years and may be reappointed to one 4-year term.

"(2) A member whose term of appointment has expired prior to completion of a pending case may continue to participate in such case, and such term shall be extended until the member's participation in the case is completed. A new member subsequently appointed after a member whose term has expired has completed a pending case shall serve the remainder of the 4-year term.

"(3) A member of the Select Committee may, for good cause, recuse himself or herself from a particular case to be considered by the Select Committee, and such vacancy shall be filled on a temporary basis in the manner of the original appointment.

"(c) Members of the Select Committee shall be compensated at daily rates not in excess of the per diem equivalent of the highest gross rate of compensation which may be paid to a regular employee of the Senate, and shall be entitled to travel and per diem expenses in accordance with the rules and regulations of the Senate.

"(d) No member of the Select Committee shall engage in any outside business or professional activity or employment for compensation which is inconsistent or in conflict with the conscientious performance of official duties. Members of the Standing Com-

mittee shall otherwise be exempt from rules XXXIV, XXXV, and XXXVII of the Standing Rules of the Senate.

"(e) Vacancies in the membership of the Select Committee shall be filled in the same manner as original appointments thereto are made, and no action may be taken by the remaining members while a vacancy exists.

"(f) Three members shall constitute a quorum for the transaction of business, except that the Select Committee may fix a lessor number for the purpose of taking sworn testimony.".

(2) Section 2(c) is amended to read as follows:

"(c) No investigation of conduct of a Member or officer of the Senate, or any resolution, report, recommendation, interpretative ruling, or advisory opinion may be made without an affirmative vote of two members of the Select Committee.".

(3) Section 3(d) is amended to read as follows:

"(d) Subpoenas may be issued by the Select Committee or by the chairman. Any such subpoena shall be signed by the chairman and may be served by any person designated by the chairman. The chairman of the Select Committee or any member thereof may administer oaths to witnesses.".

• Mr. ROTH. Mr. President, I am today introducing a resolution aimed at strengthening the independence and credibility of the Select Committee on Ethics. It would accomplish this by changing the membership of the select committee, so that no sitting Senator would be a member of that body. Instead, two retired Members of Congress would be named to the committee, who in turn would select a retired judge to serve as chairman.

This three-member select committee would be paid on a per diem basis, serve 4-year terms, and not be eligible for reappointment. They would be prohibited from engaging in any outside employment that is in conflict with their duties on the committee.

I have long been concerned with the problems inherent in asking Senators to investigate the conduct of their own colleagues. I first raised this concern in 1977, when I offered a similar proposal. In the ensuing years I have seen little to convince me that the present process is either reasonable or credible.

The Constitution requires that the Senate judge the propriety of its own Members' conduct. This is a difficult task for any small, collegial organization, but one we are duty-bound to undertake. Far more difficult, however, is the task of actually investigating, and recommending specific action on, the conduct of a Member. That is what the Select Committee on Ethics must do, yet few Senators feel comfortable in this role.

This discomfort is heightened by the public's distrust of Congress' ability to act in this area with objectivity and thoroughness. Committee members know that even where no misconduct has been found, an exoneration can unfairly taint both the investigators and the investigated.

Clearly there is a need for both the perception and the reality of greater independence by the investigating body. There is not much we can do about the constitutionally imposed specter of "Senators judging Senators," at least in the end. But we can do something about the process that occurs before the issue reaches the Senate floor.

A committee of three non-Senators will have greater independence in conducting thorough investigations and making fair recommendations. The perception and reality of this would be enhanced by having a former judge as the chairman. The two former Members of Congress will bring a familiarity with congressional institutions and practices, without the added difficulty of having to work closely with someone they are also investigating. It creates a real problem when you have to investigate someone whose vote you are seeking at the same time.

The current system puts the members of the Select Committee on Ethics in a very difficult position. In fact, the Senate owes a debt of gratitude to those who have been willing to serve in this country. It is time to relieve Senators of this most difficult task of investigating, and recommending action on, close colleagues. I believe my proposal would accomplish this in a way that strengthens the independence and credibility of the Select Committee on Ethics.•

SENATE RESOLUTION 226—RELATIVE TO CERTAIN MINORITY PARTY COMMITTEE APPOINTMENTS

Mr. GARN (for Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 226

Resolved, That the Senator from Rhode Island (Mr. CHAFEE) shall continue his membership on the Committees on Banking, Housing and Urban Affairs until the convening of the Second Session of the One Hundred Second Congress.

SENATE RESOLUTION 227—RELATIVE TO AGRICULTURAL SUBSIDIES AND THE GATT NEGOTIATIONS

Mr. PRESSLER submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 227

Whereas in 1985, negotiations on an international agreement to reform the General Agreement on Tariffs and Trade (hereafter in this resolution referred to as "GATT") began in Punta del Este, Uruguay, with a targeted conclusion date of December 1990;

Whereas the United States and other major agricultural exporting nations insisted from the start on significant reductions in the subsidy programs operated by the European Community under its Common Agricultural Policy;

Whereas in December 1990, after the European Community decided against reducing the subsidy programs of its Common Agricultural Policy, no international agricultural subsidy reduction agreement was reached;

Whereas in November 1991, the European Community indicated some willingness to reduce its export subsidies during the GATT negotiations;

Whereas American agriculture has a long tradition of supporting international efforts to achieve more open markets and fairer rules governing world agricultural trade;

Whereas the support of United States farmers and ranchers for multilateral and other trade negotiations depends on the success of the Uruguay Round GATT negotiations in achieving agricultural subsidy reductions in the European Community; and

Whereas any agreement under the GATT that is not supported by American farmers and ranchers would not be acceptable to the Congress: Now, therefore, be it

Resolved, That it is the sense of the Senate that any agreement regarding proposed changes to the GATT must—

(1) achieve the elimination or substantial reduction of export subsidies as a means of disposing of agricultural surpluses in the world market;

(2) achieve new and expanded foreign market opportunities for United States farm products;

(3) ensure the European Community does not offset possible reductions in its agricultural export subsidies by adopting programs, such as variable levies or tariffs, which have the effect of substantially limiting United States agricultural exports to the European Community;

(4) not limit the United States' ability to exercise its rights under the GATT to eliminate unfair trade barriers in the future; and

(5) achieve a sound agreement governing sanitary and phytosanitary regulations.

Mr. PRESSLER. Mr. President, I am submitting a resolution expressing the sense of the Senate that meaningful reforms with respect to agricultural subsidies must be achieved in the GATT negotiations. As I said on the Senate floor last week, recent reports in the world press, as well as papers here at home, stated that our trade negotiators had offered a major concession by proposing that the EC cut its export subsidies by 35 percent over the next 5 years. It was also reported that the United States and the EC have forged a crucial compromise over the issue of agricultural subsidies.

If these proposed changes in our negotiating position are true, I am very disappointed, I will fight any GATT changes that hurt our farmers and ranchers.

Future trade agreements must ensure freer and fairer trade for American farmers. Growth in international trade is key to the future of U.S. agriculture. We must open more world markets to U.S. farmers and ranchers.

Mr. President, the resolution I am now introducing sends a message to our GATT negotiators on what changes are needed in the agricultural provisions of the GATT. The resolution is quite simple and stresses five points.

First, the agreement must achieve the elimination or substantial reduction of export subsidies as a means of

disposing of agricultural surpluses in the world markets. Over the last 10 years, U.S. agricultural exports to the EC have fallen from $11 billion to $6.5 billion. The loss is the result of the EC's mounting commodity surpluses, which built up after implementation of the EC common agricultural policy. The EC's need to dispose of these surpluses has resulted in the dumping of its agricultural surpluses on world markets, resulting in lower prices and lost markets for U.S. farmers and ranchers.

Second, the agreement must achieve new and expanded foreign market opportunities for U.S. farm products. Actions of the EC have resulted in the EC moving in just 10 years from a net importer of agricultural products to a net exporter. Actions of the EC have cost American agriculture billions of dollars in lost sales and lost markets. Changes in the GATT must reverse the liberal subsidy policies of the EC.

Third, the agreement must ensure the European Community does not offset possible reductions in its agricultural export subsidies by adopting other programs, such as variable levies or tariffs, which have the effect of substantially limiting U.S. agricultural exports to the European Community. New trade restrictions should not be erected to reverse any gains made by the lowering of export subsidies.

Fourth, the agreement must not limit the United States' ability to exercise its rights under the GATT to eliminate unfair trade barriers in the future. Posturing by the EC for a truce on further GATT disputes is uncertain and vague at best. The Uruguay round agreement should not result in legitimizing unfair trade practices or prevent the United States from pursuing formal actions against unfair trade practices.

Fifth, the negotiations must achieve a sound agreement governing sanitary and phytosanitary regulations. These are regulations that provide for food safety and plant and animal health. A sound agreement would protect human, animal, or plant health on the basis of sound scientific evidence and on the principle of equivalency. Regulations that are not identical but have the same effect in ensuring a given level of protection should be deemed to be equivalent.

Mr. President, economic gains from increased U.S. agricultural exports could be substantial. Every billion dollars' worth of agricultural exports means 26,000 jobs here in the United States.

Allowing the EC to continue its protectionist agricultural subsidy programs means that South Dakota farmers and ranchers would continue to face unfair foreign competition. Every farmer and rancher in South Dakota knows that higher grain, dairy, and meat prices depend on better access to foreign markets. The United States has reduced substantially its agricultural subsidies over the past 10 years, while the EC has increased subsidies. We must keep pressure on the EC to make major reductions in its export subsidies. This is essential if U.S. farmers and ranchers are to have any hope for a decent return for their hard work and investment.

AMENDMENTS SUBMITTED

VETERANS POST-TRAUMATIC STRESS DISORDER TREATMENT ACT OF 1991

SIMPSON AMENDMENT NO. 1358

Mr. SIMPSON proposed an amendment to the bill (S. 869) to amend title 38, United States Code, to improve the availability of treatment of veterans for post-traumatic stress disorder, and for other purposes, as follows:

On page 16, strike out line 18 and all that follows through page 18, line 22.

On page 18, line 23, strike out "104" and insert in lieu thereof "103".

On page 19, line 10, strike out "105" and insert in lieu thereof "104".

On page 22, line 1, strike out "106" and insert in lieu thereof "105".

On page 24, line 3, strike out "107" and insert in lieu thereof "106".

On page 24, line 21, strike out "108" and insert in lieu thereof "107".

On page 26, line 21, strike out "109" and insert in lieu thereof "108".

On page 28, line 19, strike out "110" and insert in lieu thereof "109".

SIMPSON AMENDMENT NO. 1359

Mr. SIMPSON proposed an amendment to the bill S. 869, supra, as follows:

On page 18, strike out line 23 and all that follows through page 19, line 9.

On page 19, line 10, strike out "105" and insert in lieu thereof "104".

On page 22, line 1, strike out "106" and insert in lieu thereof "105".

On page 24, line 3, strike out "107" and insert in lieu thereof "106".

On page 24, line 21, strike out "108" and insert in lieu thereof "107".

On page 26, line 21, strike out "109" and insert in lieu thereof "108".

On page 28, line 19, strike out "110" and insert in lieu thereof "109".

RIEGLE AMENDMENT NO. 1360

Mr. DeCONCINI (for Mr. RIEGLE) proposed an amendment to the bill S. 869, supra, as follows:

On page 67, below line 14, add the following:

TITLE IV—MISCELLANEOUS

SEC. 401. AUTHORIZATION TO FLY POW/MIA FLAG AT NATIONAL CEMETERIES OF THE UNITED STATES.

(a) AUTHORIZATION.—The director of each national cemetery is authorized to display a POW/MIA flag on a flagstaff at that cemetery. In determining whether to display a POW/MIA flag at the cemetery, the director is authorized and urged to consult with appropriate representatives of local civic and veterans' organizations having an interest in the activities of the cemetery.

(b) PROHIBITION.—No officer or other employee of the Federal Government may obligate appropriated funds for the purpose of purchasing a POW/MIA flag for display at a national cemetary.

(c) DEFINITIONS.—In this section:

(1) The term "national cemetery" means any cemetery in the National Cemetery System referred to in section 1000 of title 38, United States Code.

(2) The term "POW/MIA flag" means the flag designated as the National League of Families POW/MIA flag pursuant to section 2 of the Joint Resolution designating September 21, 1990, as "National POW/MIA Recognition Day", and recognizing the National League of Families POW/MIA flag (Public Law 101-355; 104 Stat. 416).

(3) The term "flagstaff" means any flagstaff at a national cemetery, including the main flagstaff of the cemetery.

SIMPSON AMENDMENT NO. 1361

Mr. SIMPSON proposed an amendment to the bill S. 869, supra, as follows:

On page 67, below line 14, insert the following new matter:

TITLE IV—MISCELLANEOUS

SEC. 401. INDEXATION OF COST-OF-LIVING ADJUSTMENTS IN RATES OF COMPENSATION.

(a) IN GENERAL.—Section 5312 is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

"(c)(1) Effective December 1 of each year, each rate of disability compensation under sections 1114 and 1115 of this title, dependency and indemnity compensation under sections 1311, 1313, and 1314 of this title, and the clothing allowance under section 1362 of this title shall be increased by the increase in the price index for the base quarter of such year from the price index for the base quarter of the immediately preceding year, adjusted to the nearest 1/10 of 1 percent. The price index for a base quarter shall be the arithmetical mean of such index for the three months comprising such quarter.

"(2) For the purpose of this section—

"(A) The term 'price index' means the Consumer Price Index—Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics; and

"(B) The term 'base quarter,' with respect to a calendar year, means the calendar quarter ending on September 30 of such year.".

(b) PUBLICATION REQUIREMENT.—Section 5312(d) (as redesignated by subsection (a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph (2):

"(2) Whenever disability compensation, dependency and indemnity compensation, and clothing allowance rates are increased under subsection (c), the Secretary shall publish the rates (as increased) in the Federal Register as soon after such increase as practicable.".

(c) ADMINISTRATIVE ADJUSTMENT.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview

of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

DeCONCINI AMENDMENT NO. 1362

Mr. DeCONCINI proposed an amendment to the bill S. 869, supra, as follows:

On page 48, line 10, strike out "662" and insert in lieu thereof "1762".

WOMEN'S BUSINESS DEVELOPMENT ACT

BUMPERS (AND KASTEN) AMENDMENT NO. 1363

Mr. DODD (for Mr. BUMPERS, for himself and Mr. KASTEN) proposed an amendment to the bill (H.R. 2629) to amend the Small Business Act to assist the development of small business concerns owned and controlled by women, and for other purposes, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Women's Business Development Act of 1991".

SEC. 2. WOMEN'S DEMONSTRATION PROJECTS.

The Small Business Act is amended by adding at the end the following new section:

"SEC. 28. (a) The Administration may provide financial assistance to private organizations to conduct 3-year demonstration projects for the benefit of small business concerns owned and controlled by women. The projects shall provide—

"(1) financial assistance, including training and counseling in how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and managing cash flow and other financial operations of a business concern;

"(2) management assistance, including training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

"(3) marketing assistance, including training and counseling in identifying and segmenting domestic and international market opportunities, preparing and executing marketing plans, developing pricing strategies, locating contract opportunities, negotiating contracts, and utilizing varying public relations and advertising techniques.

"(b)(1) As a condition of receiving financial assistance authorized by this section, the recipient organization shall agree to obtain, after its application has been approved and notice of award has been issued, cash contributions from non-Federal sources as follows:

"(A) If the project first receives its Federal financial assistance prior to fiscal year 1993, an annual amount that is not less than the amount of the Federal financial assistance provided each year.

"(B) If the project first receives Federal financial assistance in fiscal year 1993, or thereafter, annual amounts equal to—

"(i) in the first year, 1 non-Federal dollar for each 2 Federal dollars;

"(ii) in the second year, 1 non-Federal dollar for each Federal dollar; and

"(iii) in the third and final year, 2 non-Federal dollars for each Federal dollar.

"(2) Up to one-half of the non-Federal matching assistance may be in the form of in-kind contributions which are budget line items only, including but not limited to office equipment and office space.

"(3) The financial assistance authorized pursuant to this section may be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement. The Administration may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after notice of the award has been issued and before the non-Federal matching funds are obtained.

"(4) If any recipient of assistance under this section fails to obtain the required non-Federal contribution during any year of any project, it shall not be eligible thereafter for advance disbursements under paragraph (3) during the remainder of that project, or for any other project for which it is or may be funded. In addition, prior to approving assistance to such organization for any other projects, the Administration shall specifically determine whether the Administration believes that the recipient will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

"(c) Each applicant for assistance under this section initially shall submit a 3-year plan on proposed fundraising and training activities, and may received financial assistance under this section for a maximum of 3 years per site. The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. The criteria shall include—

"(1) the experience of the applicant in conducting programs or on-going efforts designed to impart or upgrade the business skills of women business owners or potential owners;

"(2) the present ability of the applicant to commence a demonstration project within a minimum amount of time; and

"(3) the ability of the applicant to provide training and services to a representative number of women who are both social and economically disadvantaged.

"(d) For purposes of this section, the term 'small business concern' means a small business concern, either start-up or existing, owned and controlled by women, and—

"(1) which is at least 51 percent owned by 1 or more women; and

"(2) the management and daily business operations of which are controlled by 1 or more women.

"(e) There are authorized to be appropriated $4,000,000 for each fiscal year to carry out the demonstration projects authorized by this section. Notwithstanding any other provision of law, the Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this section, except that it shall ensure that all eligible sources are provided a reasonable opportunity to submit proposals.

"(f) The Administration shall prepare and transmit an annual report, beginning February 1, 1992, to the Committees on Small Business of the Senate and House of Representatives on the effectiveness of all demonstration projects conducted under the authority of this section. Such report shall provide information concerning—

"(1) the number of individuals receiving assistance;

"(2) the number of start-up business concerns formed;

"(3) the gross receipts of assisted concerns;

"(4) increases or decreases in profits of assisted concerns; and

"(5) the employment increases or decreases of assisted concerns.

"(g) The Administration shall not provide financial assistance under this section to any new project after October 1, 1995, except that it may fund projects which commenced prior thereto.".

SEC. 3. ADMINISTRATIVE PROVISION.

Section 8 of the Small Business Act (15 U.S.C. 637) is amended by striking subsection (c) and redesignating subsections (d) through (j) as subsections (c) through (k). Projects funded pursuant to the provisions of former subsection (c) shall be deemed to be funded under and shall be treated as if funded under section 28 of the Small Business Act, as added by section 2.

SEC. 4. PERMANENT AUTHORIZATION OF SMALL LOAN PROGRAM.

Section 7(a)(19)(B) of the Small Business Act (15 U.S.C. 636(a)(19)(B)) is amended by striking "during fiscal years 1989, 1990, and 1991,".

SEC. 5. NATIONAL WOMEN'S BUSINESS COUNCIL.

Subparagraph (G) of section 403(b) of the Women's Business Ownership Act of 1988 (102 Stat. 2695) is amended to read as follows:

"(G) The Chairperson and Vice Chairperson of the council shall be designated by the President and may be either a representative of the public sector or the private sector, except that the Chairperson and Vice Chairperson shall not be from the same sector concurrently. Each shall serve for a maximum term of 2 years. No person may be designated to the same office for 2 consecutive terms, nor may consecutive designees as Chairperson be from the public sector.".

NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LEAHY. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry, will hold a hearing on the nomination of Charles R. Hilty to be Assistant Secretary of Agriculture for Administration, and Gary C. Byrne to be a member of the Farm Credit Administration, Friday, November 22, 1991, at 10 a.m., in SR-332.

For further information please contact Kathleen Merrigan of the committee staff at 224-2035.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON GOVERNMENT INFORMATION AND REGULATION

Mr. DODD. Mr. President, I ask unanimous consent that the Subcommittee on Government Information and Regulation be authorized to meet on Wednesday, November 20, 1991, at 12:30 p.m., on the subject: computer security.

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

COMMITTEE ON THE JUDICIARY

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on

the Judiciary be authorized to meet during the session of the Senate on Wednesday, November 20, 1991, at 12:30 p.m., to hold a nominations hearing.

WITNESS LIST

Senators/Representatives

Senator Dennis DeConcini.
Senator Thad Cochran.
Senator Alan J. Dixon.
Senator Paul Simon.
Senator John McCain.
Senator Trent Lott.
Representative Robert H. Michel.

Judges

Joe B. McDade, Peoria, Illinois, United States District Judge for the Northern District of Illinois.

John M. Roll, Tuscon, Arizona, United States District Judge for the District of Arizona.

David C. Bramlette, Biloxi, Mississippi, United States District Judge for the Southern District of Mississippi.

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

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DODD. Mr. President, I ask unanimous consent that the Senate Committee on Agriculture, Nutrition, and Forestry, be allowed to meet during the session of the Senate on Wednesday, November 20, 1991, at 10 a.m., in SR-332, to hold a hearing regarding jobs and rural America.

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

SUBCOMMITTEE ON READINESS, SUSTAINABILITY AND SUPPORT

Mr. DODD. Mr. President, I ask unanimous consent that the Subcommittee on Readiness, Sustainability and Support of the Committee on Armed Services be authorized to meet on Wednesday, November 20, 1991, at 10 a.m., to receive testimony on Defense Department purchases from the Federal Prison Industries.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., November 20, 1991, to consider S. 484, S. 106, H.R. 543, S. 549, Senate Joint Resolution 23, S. 1501, H.R. 429, S. 1225, S. 979, S. 1351, S. 1770, nomination of Leo Duffy, H.R. 476, H.R. 2927, S. 461, S. 1552, H.R. 3387, H.R. 990, H.R. 2370, S. 606, S. 1696, and S. 1228.

AGENDA AND DATE PUT ON AGENDA

1. S. 484, to establish conditions for the sale and delivery of water from the Central Valley Project, California, a Bureau of Reclamation facility, and for other purposes; 7-19-91.

2. S. 106, to amend the Federal Power Act; 9-20-91.

3. H.R. 543, to establish the Manzanar National Historic Site in the State of California, and for other purposes; 9-20-91.

4. S. 549, to amend the Wild and Scenic Rivers Act by designating a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System; 10-10-91.

5. S.J. Res. 23, to consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920; 10-10-91.

6. S. 1501, to amend the Reclamation Reform Act of 1982, and for other purposes; 11-08-91.

7. H.R. 429, to amend certain Federal reclamation laws to improve enforcement of acreage limitations, and for other purposes; 11-08-91.

8. S. 1225, to designate certain lands in California as wilderness, and for other purposes; 11-08-91.

9. S. 979, to provide for strong Department of Energy support of research and development of technologies identified in the most recent National Critical Technologies Report as critical to U.S. economic prosperity and national security, and for other purposes; 11-15-91.

10. S. 1351, to encourage partnerships between Department of Energy Laboratories and educational institutions, industry, and other Federal laboratories in support of critical national objectives in energy, national security, the environment, and scientific and technological competitiveness; 11-15-91.

11. S. 1770, to convey certain surplus real property located in the Black Hills National Forest to the Black Hills Workshop and Training Center, and for other purposes; 11-15-91.

12. Nomination of Leo Duffy to be Assistant Secretary for Environmental Restoration and Waste Management, U.S. Department of Energy; 11-15-91.

13. H.R. 476, to designate certain rivers in the State of Michigan as components of the National Wild and Scenic Rivers System, and for other purposes; 11-15-91.

14. H.R. 2927, to provide for the establishment of the St. Croix, Virgin Islands Historical Park and Ecological Preserve, and for other purposes; 11-15-91.

15. S. 461, to amend the Wild and Scenic Rivers Act of 1968 by designating segments of the Lamprey River in the State of New Hampshire for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes; 11-15-91.

16. S. 1552, to amend the Wild and Scenic Rivers Act by designating the White Clay Creek in Delaware and Pennsylvania for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes; 11-15-91.

17. H.R. 3387, to amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, and for other purposes; 11-15-91.

18. H.R. 990, to authorize additional appropriations for land acquisition at Monocacy National Battlefield, Maryland; 11-15-91.

19. H.R. 2370, to alter the boundaries of the Stones River National Battlefield, and for other purposes; 11-15-91.

20. S. 606, to amend the Wild and Scenic Rivers Act by designating certain segments of the Allegheny River in the Commonwealth of Pennsylvania as a component of the National Wild and Scenic Rivers System, and for other purposes; 11-15-91.

21. S. 1696, to designate certain National Forest lands in the State of Montana as wilderness, to release other National Forest lands in the State of Montana for multiple use management, and for other purposes; 11-15-91.

22. S. 1228, to provide for a comprehensive review by the Secretary of the Interior of western water resource problems and programs administered by the Geological Survey, the Bureau of Reclamation, and for other operations of the Department of the Interior, and for other purposes; 11-15-91.

1. FROM THE SUBCOMMITTEE ON WATER AND POWER

S. 484 (Bradley and Cranston). The Central Valley Project Improvement Act.

Purpose: The purposes of S. 484 are to promote and expand the authorized purposes of the Central Valley Project, California, by establishing conditions which must be satisfied before the Secretary of the Interior may sell or deliver water from the Central Valley Project under contract or other agreement, and for other purposes.

Legislative History: S. 484 was introduced by Senators Bradley and Cranston on February 26, 1991. The Subcommittee on Water and Power conducted hearings on S. 484 in Los Angeles, California, on March 18; in Washington, D.C. on May 8; and in Sacramento, California on May 30, 1991.

At the May 8 Subcommittee hearing, representatives from the Bureau of Reclamation testified in opposition to S. 484 as unnecessary at this time. Representatives from the U.S. Fish and Wildlife Service and Bureau of Indian Affairs supported certain provisions of S. 484, while opposing others as unnecessary. Representatives from the Environmental Protection Agency supported the bill. A representative of the Department of Agriculture expressed concern over certain provisions of the bill, while supporting others.

Amendments: Senator Bradley may offer amendments. Other amendments are expected.

2. FROM THE SUBCOMMITTEE ON WATER AND POWER

S. 106 (Craig, Symms & Seymour). A bill to amend the Federal Power Act.

Purpose: The purpose of S. 106 is to reverse the U.S. Supreme Court's 1990 opinion in the case of *California* v. *FERC* (generally known as the "*Rock Creek*" case). The bill amends the Federal Power Act to prohibit the granting of a Federal license for a hydroelectric project unless the applicant complies with all substantive and procedural requirements of the affected State in which the project is located with respect to water acquisition and use.

Legislative History: S. 106 was introduced on January 14, 1991. The Subcommittee on Water and Power conducted a hearing on S. 106 on June 5, 1991. The Administration and staff of the Federal Energy Regulatory Commission testified in opposition to the measure.

Amendments: Amendments are expected.

3. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

H.R. 543. To establish the Manzanar National Historic Site in the State of California, and for other purposes.

Purpose: The purpose of title I of H.R. 543 is to establish the 500 acre Manzanar National Historic Site in California. Title II of H.R. 543 directs the Secretary of the Interior to conduct a National Historic Landmark theme study on Japanese American history.

Legislative History: H.R. 543 passed the House of Representatives by a voice vote on June 24, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on H.R. 543 on July 25, 1991. The Subcommittee also held a hearing on S. 621, sponsored by Senators Cranston and Akaka,

which would establish the Manzanar National Historic Site, and S. 1344, introduced by Senators Akaka, Cranston and Adams, pertaining to the Japanese American history theme study.

At the Subcommittee hearing, the Associate Director of the National Park Service testified in support of title I and in opposition to title II of H.R. 543.

Amendments: Amendments are likely.

4. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

S. 549 (Cranston). To amend the Wild and Scenic Rivers Act by designating a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System.

Purpose: The purpose of S. 549 is to designate approximately 8 miles of the lower Merced River in California as a component of the National Wild and Scenic Rivers System.

Legislative History: S 549 was introduced by Senator Cranston on March 5, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on the bill on March 21, 1991. The House and Senate passed similar legislation last Congress, although because of non-germane amendments, the bill was not enacted.

At the Subcommittee hearing, the Assistant Director of the Bureau of Land Management testified in support of the bill, if amended.

Amendments: Amendments are likely.

5. FROM THE FULL COMMITTEE

S.J. Res. 23 (Mr. Inouye). To consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920.

Purpose: The purpose of Senate Joint Resolution 23 is to provide Congressional consent to amendments to the Hawaiian Homes Commission Act. In 1959, the Hawaii Admission Act transferred authority over the Hawaiian Homes Commission Act to the State of Hawaii, but at the same time required Congressional consent to certain amendments to the Act proposed by the State.

Legislative History: Senate Joint Resolutions 23 through 34 were introduced by Senator Inouye on January 14, 1991. A hearing was held on July 23, 1991. Testimony was heard from representatives of the Department of the Interior, the Office of the Governor, the Department of Hawaiian Home Lands, and the Office of Hawaiian Affairs.

Amendments: Amendments are anticipated.

6. FROM THE SUBCOMMITTEE ON WATER AND POWER

S. 1501 (Burns, Conrad, Shelby, Simpson, Murkowski, Akaka, Baucus, Domenici, Wallop, Brown, Craig, Symms, Pryor, and Cochran). A bill to amend the Reclamation Reform Act, and for other purposes.

Purpose: The purpose of S. 1501 is to amend the Reclamation Reform Act of 1982.

Legislative History: S. 1501 was introduced on July 18, 1991 and received a hearing before the Subcommittee on Water and Power on September 12, 1991.

Amendments: Amendments are expected.

7. FROM THE SUBCOMMITTEE ON WATER AND POWER

H.R. 429—Reclamation Projects Authorization and Adjustment Act of 1991.

Purpose: The purpose of H.R. 429 is to authorize certain new Reclamation program facilities and projects, changes to other Reclamation facilities and projects, and other purposes.

Legislative History: H.R. 429 was received in the Senate on June 25, 1991. The Subcommittee on Water and Power conducted four days of hearings on various titles of H.R. 429:

September 12—title XVII;

October 22—titles X, XI, XXIV, XXVII, XXIX, and XXX;

October 23—titles XII, XXI, XXII, XXVI, and XXVIII;

October 24—titles XV, XVI, XVIII, and XXV.

Amendments: Amendments are expected.

8. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

S. 1225 (Seymour and Cranston). To designate certain lands in California as wilderness, and for other purposes.

Purpose: The purpose of S. 1225 are to designate approximately 398,000 acres of the Los Padres National Forest as wilderness, to designate 190 miles of six rivers for inclusion or for study for inclusion in the Wild and Scenic Rivers System, and to withdraw approximately 75,000 acres of federal land from mineral entry.

Legislative History: S. 1225 was introduced by Senators Seymour and Cranston on June 5, 1991. A companion bill, H.R. 2556, has been introduced in the House. Last year, a similar bill passed the House but was never considered by the Senate.

At the Subcommittee hearing, the Associate Deputy Chief of the Forest Service testified in support of the bill, if amended.

Amendments: Amendments are anticipated.

9. FROM THE SUBCOMMITTEE ON RESEARCH AND DEVELOPMENT

S. 979 (Bingaman, Johnston, Domenici and Shelby), the "Department of Energy Critical Technologies of 1991".

Purpose: The purpose of S. 979 is to provide for Department of Energy support of research and development of technologies that are critical to United States economic prosperity and national security. S. 979 would require the Secretary, through a Critical Technologies Planning Council, to develop a five-year plan that would provide for coordination of research and development activities of the Department's laboratories. The bill would also direct the Secretary to solicit and select proposals for partnerships among the laboratories, educational institutions, and the private sector.

Legislative History: S. 979 was introduced on April 25, 1991, and was referred to the Energy and Natural Resources Committee. The Subcommittee on Energy Research and Development held a hearing on June 27, 1991.

At the hearing, the Administration was supportive of many of the goals of S. 979 but opposed many of the specific provisions of the bill. Witnesses from industry and the academic community were generally supportive of many of the goals and activities expressed in S. 979.

Amendments: Amendments are anticipated.

10. FROM THE FULL COMMITTEE

S. 1351 (Domenici, Johnston, Bingaman, Wallop, Ford, Craig, Simon, Moynihan, Gorton, Seymour, D'Amato, Symms, Gore, Warner and Shelby), the "Department of Energy Science and Technology Partnership Act".

Purpose: The purpose of S. 1351 is to encourage partnerships between Department of Energy laboratories and educational institutions, industry, and other Federal laboratories in support of critical national objectives in energy, national security, the environment, and scientific and technological competitiveness.

The bill identifies the specific areas in which the departmental laboratories are authorized to conduct research and development activities under these partnership agreements.

Legislative History: S. 1351 was introduced on June 21, 1991, and was referred to the Energy and Natural Resources Committee. The full Committee held hearings on July 30 and 31, 1991.

At the hearings, the Secretary of Energy and witnesses from industry and the academic community, endorsed and supported many of the goals and activities expressed in S. 1351.

Amendments: Amendments are anticipated.

11. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

S. 1770 (Daschle), To convey certain surplus real property located in the Black Hills National Forest to the Black Hills Workshop and Training Center, and for other purposes.

Purpose: The purpose of S. 1770 is to convey approximately 2.2 acres of surplus property in the Black Hills National Forest to the Black Hills Workshop and Training Center.

Legislative History: S. 1770 was introduced by Senator Daschle on September 27, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on this measure on November 7, 1991.

At the Subcommittee hearing, a representative from the Forest Service testified in support of the bill, if amended.

Amendments: Amendments are expected.

12. FROM THE FULL COMMITTEE

To consider the nomination of Leo Duffy to be Assistant Secretary for Environmental Restoration and Waste Management, U.S. Department of Energy.

Legislative History: The Full Committee conducted a hearing on November 19, 1991. Mr. Duffy has submitted all required information under the Committee Rules.

13. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

H.R. 476. To designate certain rivers in the State of Michigan as components of the National Wild and Scenic Rivers System, and for other purposes.

Purpose: The purpose of H.R. 476 is to designate 15 river segments in the State of Michigan as components of the National Wild and Scenic River System and to provide for the designation of 10 river segments in the State as Wild and Scenic Study Rivers.

Legislative History: H.R. 476 passed the House of Representatives by a voice vote on June 3, 1991. Companion legislation, S. 209, has been introduced in the Senate by Senator Riegle. The Subcommittee on Public Lands, National Parks and Forests held a hearing on both bills on October 15, 1991. Last Congress, the House passed similar legislation, H.R. 4019, although no action was taken in the Senate.

At the Subcommittee hearing, the Associate Deputy Chief of the Forest Service testified in support of the bill, if amended.

Amendments: Amendments are possible.

14. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

H.R. 2927. To provide for the establishment of the St. Croix, Virgin Islands Historical Park and Ecological Preserve, and for other purposes.

Purpose: The purpose of H.R. 2927 is to establish the 1.046 acre "Salt River Bay National Historical Park and Preserve at St. Croix, Virgin Islands."

Legislative History: H.R. 2927 passed the House of Representatives by a voice vote on November 5, 1991. Companion legislation, S. 1495, was introduced in the Senate by Senator Johnson on July 18, 1991. The Subcommittee on Public Lands, National Parks and Forest held a hearing on S. 1495 on September 26, 1991.

At the Subcommittee hearing, the Secretary of the Interior testified in support of the bill.

Amendments: Amendments are likely.

15. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

S. 461 (Smith and Rudman). To amend the Wild and Scenic Rivers Act of 1968 by designating segments of the Lamprey River in the State of New Hampshire for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes.

Purpose: The purpose of S. 461 is to designate a ten mile segment of the Lamprey River in New Hampshire as a Wild and Scenic Study River.

Legislative History: S. 461 was introduced by Senators Smith and Rudman on February 21, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on the bill on November 7, 1991.

At the Subcommittee hearing, the Associate Director of the National Park Service testified in support of the bill, if amended.

Amendments: No amendments are expected.

16. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

S. 1552 (Biden, Roth, Wofford, and Specter). To amend the Wild and Scenic Rivers Act by designating the White Clay Creek in Delaware and Pennsylvania for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes.

Purpose: The purpose of S. 1552 is to designate the White Clay Creek in Delaware and Pennsylvania as a Wild and Scenic Study River. The Secretary of the Interior is to complete the study within 3 years after the date of enactment of this Act.

Legislative History: S. 1552 was introduced by Senators Biden, Wofford, Roth, and Specter on July 24, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on the bill on November 7, 1991.

At the Subcommittee hearing, the Associate Director of the National Park Service testified in support of the bill.

Amendments: No amendments are anticipated.

17. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

H.R. 3387. To amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, and for other purposes.

Purpose: The purpose of H.R. 3387 is to reauthorize appropriations for the Pennsylvania Avenue Department Corporation totaling approximately $2.8 million for FY 1992.

Legislative History: H.R. 3387 passed the House of Representatives by a voice vote on November 6, 1991. Similar legislation, S. 1660, was introduced by Senator Johnston at the request of the Administration on August 2, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on S. 1660 on November 7, 1991.

Amendments: No amendments are expected.

18. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

H.R. 990. To authorize additional appropriations for land acquisition at Monocacy National Battlefield, Maryland.

Purpose: The purpose of H.R. 990 is to authorize an additional $20 million for land acquisition at Monocacy National Battlefield in Maryland.

Legislative History: H.R. 990 passed the House of Representatives by a voice vote on June 3, 1991. Identical legislation, S. 1230 was introduced by Senators Sarbanes and Mikulski on June 6, 1991. The Subcommittee on Public Lands, National Parks, and Forests held a hearing on both bills on November 7, 1991.

At the Subcommittee hearing, the Associate Director of the National Park Service testified in support of the bill.

Amendments: No amendments are expected.

19. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

H.R. 2370. To alter the boundaries of the Stones River National Battlefield, and for other purposes.

Purpose. The purpose of H.R. 2370 is to modify the boundaries of the Stones River National Battlefield in Tennessee to authorize the addition of approximately 332 acres to the park.

Legislative History: H.R. 2370 passed the House of Representatives by a voice vote on September 24, 1991. The Senate companion measure, S. 1772, was introduced by Senators Sasser and Gore on September 30, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on both bills on November 7, 1991.

At the Subcommittee hearing, the Associate Director of the National Park Service testified in support of the bill, if amended.

Amendments: Amendments are possible.

20. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

S. 606 (Heinz). To amend the Wild and Scenic Rivers Act by designating certain segments of the Allegheny River in the Commonwealth of Pennsylvania as a component of the National Wild and Scenic Rivers System, and for other purposes.

Purpose: The purpose of S. 606 is to designate approximately 85 miles of the Allegheny River in Pennsylvania as a component of the Wild and Scenic Rivers System.

Legislative History: S. 606 was introduced by the late Senator John Heinz on March 7, 1991. Companion legislation, H.R. 1363, passed the House of Representatives by a voice vote on June 3, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on S. 606 on November 7, 1991.

At the Subcommittee hearing, the Associate Deputy Chief for the Forest Service testified in opposition of the bill, unless amended.

Amendments: Amendments are likely.

21. FROM THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

S. 1696 (Baucus). To designate certain National Forest lands in the State of Montana as wilderness, to release other National Forest lands in the State of Montana for multiple use management, and for other purposes.

Purpose: The purposes of S. 1696 are to designate approximately 1.4 million acres of the National Forest lands in Montana as wilderness; approximately 350,000 acres of special management areas; approximately 155,000 acres as wilderness study areas; and to release approximately 4 million acres land in those forests for multiple-use management.

Legislative History: S. 1696 was introduced by Senator Baucus on September 10, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on the measure on October 22, 1991. A bill designating wilderness on two forests, S. 72, was introduced by Senator Baucus on January 14, 1991. A field hearing was held on S. 72 in June 1991.

At the Subcommittee hearing on S. 1696, a representative from the Department of Agriculture testified in opposition to the bill unless significantly amended.

Amendments: Amendments will be offered.

22. FROM THE SUBCOMMITTEE ON WATER AND POWER

S. 1228 (Hatfield and Bradley)—the "Western Water Policy Review Act of 1991."

Purpose: The purpose of S. 1228 is to provide for a comprehensive review by the Secretary of the Interior of western water resource problems and programs administered by the Geological Survey, the Bureau of Reclamation, and other operations of the Department of the Interior.

Legislative History: S. 1228 was introduced on June 6, 1991. The Subcommittee on Water and Power conducted a hearing on S. 1228 on September 19, 1991. At the Subcommittee hearing, the Commissioner of Reclamation agreed with the overall policies contained in the bill, but expressed specific objections to certain provisions.

Amendments: Amendments are expected.

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

COMMITTEE ON ARMED SERVICES

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Wednesday, November 20, 1991 at 5 p.m., in executive session, to continue discussion of the DOD and committee investigation of the Air Force promotion selection process.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. DODD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet on November 20, 1991, beginning at 9:00 a.m., in 485 Russell Senate Office Building, to consider for report to the Senate, H.R. 1426, the Lumbee Recognition Act, and to meet on the nomination for report to the Senate, David Lester, Wiley Buchanan, Robert Ames, and William Johnson to be members of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development, and to meet on Federal court review of tribal court rulings in actions arising under the Indian Civil Rights Act.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DODD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, November 20, 1991, at 10 a.m. to hold a closed hearing on intelligence matters.

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

COMMITTEE ON FINANCE

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on November 20, 1991, at 10:45 a.m. to consider Senate Joint Resolution 215, a resolution approving the extension of most-favored-nation treatment to the products of the Union of Soviet Socialist Repub-

lics; to hear and consider the nominations of Alan M. Dunn, to be an Assistant Secretary of Commerce; Peter S. Watson to be a member of the U.S. International Trade Commission; and, Arnold R. Thompkins, to be an Assistant Secretary of Health and Human Services; and, to consider a request for the International Trade Commission to conduct an investigation pursuant to section 332 of the Tariff Act of 1930 on import competition in the macadamia nut industry.

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

COMMITTEE ON FINANCE

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on November 20, 1991, at 9:30 a.m. to hold a hearing on issues that must be dealt with before the Uruguay round of trade negotiations can be completed.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. DODD. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a markup on the nominations of Allen Clark to be Director of the VA National Cemetery System, James Endicott to be VA General Counsel, Sylvia Chavez Long to be Assistant Secretary for Congressional Affairs, and Jo Ann Webb to be Assistant Secretary for Policy and Planning, on Wednesday, November 20, 1991, in the Reception Room off of the Senate floor after the first rollcall occurring after 10 a.m.

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

ADDITIONAL STATEMENTS

RULES OF PROCEDURE, COMMITTEE ON GOVERNMENTAL AFFAIRS

• Mr. GLENN. Mr. President, in July 1991, the Committee on Governmental Affairs adopted an amendment to rule 2(A) of its rules of procedure. Rule 2(A) now reads as follows:

A. *Reporting measures and matters.* A majority of the members of the Committee shall constitute a quorum for reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

I herewith submit a copy of rules of procedure adopted by the Committee on Governmental Affairs pursuant to rule XXVI, section 2, standing rules of the Senate, and as amended in July 1991, and ask that they be printed in the RECORD at this point.

The rules of procedure follow:

RULES OF PROCEDURE OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

(Pursuant to rule XXVI, section 2, Standing Rules of the Senate)

RULE 1. MEETINGS AND MEETING PROCEDURES OTHER THAN HEARINGS

A. *Meeting dates.* The Committee shall hold its regular meetings on the first Thursday of each month, when the Congress is in session, or at such other times as the chairman shall determine. Additional meetings may be called by the chairman as he deems necessary to expedite Committee business. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

B. *Calling special Committee meetings.* If at least three members of the Committee desire the chairman to call a special meeting, they may file in the offices of the Committee a written request therefor, addressed to the chairman. Immediately thereafter, the clerk of the Committee shall notify the chairman of such request. If, within three calendar days after the filing of such request, the chairman fails to call the requested special meeting, which is to be held within seven calendar days after the filing of such request, a majority of the Committee members may file in the offices of the Committee their written notice that a special Committee meeting will be held, specifying the date and hour thereof, and the Committee shall meet on that date and hour. Immediately upon the filing of such notice, the Committee clerk shall notify all Committee members that such special meeting will be held and inform them of its date and hour. If the chairman is not present at any regular, additional or special meeting, the ranking majority member present shall preside. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

C. *Meeting notices and agenda.* Written notices of Committee meetings, accompanied by an agenda, enumerating the items of business to be considered, shall be sent to all Committee members at least three days in advance of such meetings, excusing Saturdays, Sundays, and legal holidays in which the Senate is not in session. In the event that unforeseen requirements or Committee business prevent a three-day notice of either the meeting or agenda, the Committee staff shall communicate such notice and agenda, or any revisions to the agenda, as soon as practicable by telephone or otherwise to members or appropriate staff assistants in their offices.

D. *Open business meetings.* Meetings for the transaction of Committee or Subcommittee business shall be conducted in open session, except that a meeting or series of meetings on the same subject for a period of no more than fourteen calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee members when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.)

Notwithstanding the foregoing, whenever disorder arises during a Committee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the chairman to enforce order on his own initiative and without any point of order being made by a member of the Committee; *provided, further,* that when the chairman finds it necessary to maintain order, he shall have the power to clear the room, and the Committee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. 5(d), Standing Rules of the Senate.)

E. *Prior notice of first degree amendments.* It shall not be in order for the Committee, or a Subcommittee thereof, to consider any amendment in the first degree proposed to any measure under consideration by the Committee or Subcommittee unless a written copy of such amendment has been delivered to each member of the Committee or Subcommittee, as the case may be, and to the office of the Committee or Subcommittee, at least 24 hours before the meeting of the Committee or Subcommittee at which the amendment is to be proposed. This subsection may be waived by a majority of the members present. This subsection shall apply only when at least 72 hours written notice of a session to mark-up a measure is provided to the Committee.

F. *Meeting transcript.* The Committee shall prepare and keep a complete transcript or electronic recording adequate to fully record the proceeding of each meeting whether or not such meeting or any part thereof is closed to the public, unless a majority of the Committee members vote to forgo such a record. (Rule XXVI, Sec. 5(e), Standing Rules of the Senate.)

RULE 2. QUORUMS

A. *Reporting measures and matters.* A majority of the members of the Committee shall constitute a quorum for reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

B. *Transaction of routine business.* Five members of the Committee shall constitute a quorum for the transaction of routine business, provided that one member of the minority is present.

For the purpose of this paragraph, the term "routine business" includes the convening of a meeting and the consideration of

any business of the Committee other than reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

C. *Taking testimony.* One member of the Committee shall constitute a quorum for taking sworn or unsworn testimony. (Rule XXVI, Sec. 7(a)(2) and 7(c)(2), Standing Rules of the Senate.)

D. *Subcommittee quorums.* Subject to the provisions of sections 7(a) (1) and (2) of Rule XXVI of the Standing Rules of the Senate, the Subcommittees of this Committee are authorized to establish their own quorums for the transaction of business and the taking of sworn testimony.

E. *Proxies prohibited in establishment of quorum.* Proxies shall not be considered for the establishment of a quorum.

RULE 3. VOTING

A. *Quorum required.* Subject to the provisions of subsection (E), no vote may be taken by the Committee, or any Subcommittee thereof, on any measure or matter unless a quorum, as prescribed in the preceding section, is actually present.

B. *Reporting measures and matters.* No measure, matter or recommendation shall be reported from the Committee unless a majority of the Committee members are actually present, and the vote of the Committee to report a measure or matter shall require the concurrence of a majority of those members who are actually present at the time the vote is taken. (Rule XXVI, Sec. 7(a) (1) and (3), Standing Rules of the Senate.)

C. *Proxy voting.* Proxy voting shall be allowed on all measures and matters before the Committee, or any Subcommittees thereof, except that, when the Committee, or any Subcommittee thereof, is voting to report a measure or matter, proxy votes shall be allowed solely for the purposes of recording a member's position on the pending question. Proxy voting shall be allowed only if the absent Committee member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. All proxies shall be filed with the chief clerk of the Committee or Subcommittee thereof, as the case may be. All proxies shall be in writing and shall contain sufficient reference to the pending matter as is necessary to identify it and to inform the Committee as to how the member establishes his vote to be recorded thereon. (Rule XXVI, Sec. 7(a)(3) and 7(c)(1), Standing Rules of the Senate.)

D. *Announcement of vote.* (1) Whenever the Committee by roll call vote reports any measure or matter, the report of the Committee upon such a measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each member of the Committee. (Rule XXVI, Sec. 7(c), Standing Rules of the Senate.)

(2) Whenever the Committee by roll call vote acts upon any measure or amendment thereto, other than reporting a measure or matter, the results thereof shall be announced in the Committee report on that measure unless previously announced by the Committee, and such announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment thereto by each member of the Committee who was present at the meeting. (Rule XXVI, Sec. 7(b), Standing Rules of the Senate.)

(3) In any case in which a rollcall vote is announced, the tabulation of votes shall state separately the proxy vote recorded in favor of and in opposition to that measure, amendment thereto, or matter. (Rule XXVI, Sec. 7 (b) and (c), Standing Rules of the Senate.)

E. *Polling.* (1) The Committee, or any Subcommittee thereof, may poll (a) internal Committee matters including the Committee's staff, records and budget; (b) steps in an investigation, including issuance of subpoenas, applications for immunity orders, and requests for documents from agencies; and (c) other Committee business other than a vote on reporting to the Senate any measures, matters or recommendations or a vote on closing a meeting or hearing to the public.

(2) Only the chairman, or a Committee member or staff officer designated by him, may undertake any poll of the members of the Committee. If any member requests, any matter to be polled shall be held for meeting rather than being polled. The chief clerk of the Committee shall keep a record of polls; if a majority of the members of the Committee determine that the polled matter is in one of the areas enumerated in subsection (D) of Rule 1, the record of the poll shall be confidential. Any Committee member may move at the Committee meeting following the poll for a vote on the polled decision, such motion and vote to be subject to the provisions of subsection (D) of Rule 1, where applicable.

RULE 4. CHAIRMANSHIP OF MEETINGS AND HEARINGS

The chairman shall preside at all Committee meetings and hearings except that he shall designate a temporary chairman to act in his place if he is unable to be present at a scheduled meeting or hearing. If the chairman (or his designee) is absent ten minutes after the scheduled time set for a meeting or hearing, the senior Senator present of the chairman's party shall act in his stead until the chairman's arrival. If there is no member of the chairman's party present, the senior Senator of the Committee minority present, with the prior approval of the chairman, may open and conduct the meeting or hearing until such time as a member of the majority arrives.

RULE 5. HEARINGS AND HEARINGS PROCEDURES

A. *Announcement of hearings.* The Committee, or any Subcommittee thereof, shall make public announcement of the date, time and subject matter of any hearing to be conducted on any measure or matter at least one week in advance of such hearing, unless the Committee, or Subcommittee, determines that there is good cause to begin such hearing at an earlier date. (Rule XXVI, Sec. 4(a), Standing Rules of the Senate.)

B. *Open hearings.* Each hearing conducted by the Committee, or any Subcommittee thereof, shall be open to the public, except that a hearing or series of hearings on the same subject for a period of no more than fourteen calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the hearing to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee members when it is determined that the matters to be discussed or the testimony to be taken at such hearing or hearings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.)

Notwithstanding the foregoing, whenever disorder arises during a Committee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the chairman to enforce order on his own initiative and without any point of order being made by a member of the Committee; *provided, further,* that when the chairman finds it necessary to maintain order, he shall have the power to clear the room, and the Committee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. 5(d), Standing Rules of the Senate.)

C. *Full Committee subpoenas.* The chairman, with the approval of the ranking minority member of the Committee, is authorized to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials at a hearing or deposition, provided that the chairman may subpoena attendance or production without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena. If a subpoena is disapproved by the ranking minority member as provided in this subsection, the subpoena may be authorized by vote of the members of the Committee. When the Committee or chairman authorizes subpoenas, subpoenas may be issued upon the signature of the chairman or any other member of the Committee designated by the chairman.

D. *Witness counsel.* Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing or deposition to advise such witness while he or she is testifying, of his or her legal rights; *provided, however,* that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Committee chairman may rule that representation by counsel from the government, corporation, or association or by counsel representing other witnesses, creates a conflict of inter-

est, and that the witness shall be represented during interrogation by staff or during testimony before the Committee by personal counsel not from the government, corporation, or association or by personal counsel not representing other witnesses. This subsection shall not be construed to excuse a witness from testifying in the event his counsel is ejected for conducting himself in such manner so as to prevent, impede, disrupt, obstruct or interfere with the orderly administration of the hearings; nor shall this subsection be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

E. *Witness transcripts.* An accurate electronic or stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. The record of his or her testimony whether in public or executive session shall be made available for inspection by the witness or his or her counsel under Committee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be provided to any witness at his or her expense if he or she so requests. Upon inspecting his or her transcript, within a time limit set by the chief clerk of the Committee, a witness may request changes in the transcript to correct errors of transcription and grammatical errors; the chairman or a staff officer designated by him shall rule on such requests.

F. *Impugned persons.* Any person whose name is mentioned or is specifically identified, and who believes that evidence presented, or comment made by a member of the Committee or staff officer, at a public hearing or at a closed hearing concerning which there have been public reports, tends to impugn his or her character or adversely affect his or her reputation may:

(a) file a sworn statement of facts relevant to the evidence or comment, which statement shall be considered for placement in the hearing record by the Committee;

(b) request the opportunity to appear personally before the Committee to testify in his or her own behalf, which request shall be considered by the Committee; and

(c) submit questions in writing which he or she requests be used for the cross-examination of other witnesses called by the Committee, which questions shall be considered for use by the Committee.

G. *Radio, television, and photography.* The Committee, or any Subcommittee thereof, may permit the proceedings of hearings which are open to the public to be photographed and broadcast by radio, television or both, subject to such conditions as the Committee, or Subcommittees, may impose. (Rule XXVI, Sec. 5(c), Standing Rules of the Senate.)

H. *Advance statements of witnesses.* A witness appearing before the Committee, or any Subcommittee thereof, shall provide 100 copies of a written statement and an executive summary or synopsis of his proposed testimony at least 48 hours prior to his appearance. This requirement may be waived by the chairman and the ranking minority member following their determination that there is good cause for failure of compliance. (Rule XXVI, Sec. 4(b), Standing Rules of the Senate.)

I. *Minority witnesses.* In any hearings conducted by the Committee, or any Subcommittee thereof, the minority members of the Committee shall be entitled, upon request to the chairman by a majority of the minority to call witnesses of their selection during at least one day of such hearings. (Rule XXVI, Sec. 4(d), Standing Rules of the Senate.)

J. *Full Committee depositions.* Depositions may be taken prior to or after a hearing as provided in this subsection.

(1) Notices for the taking of depositions shall be authorized and issued by the chairman, with the approval of the ranking minority member of the Committee, provided that the chairman may initiate depositions without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the deposition within 72 hours, excluding Saturdays and Sundays, of being notified of the deposition notice. If a deposition notice is disapproved by the ranking minority member as provided in this subsection, the deposition notice may be authorized by a vote of the members of the Committee. Committee deposition notices shall specify a time and place for examination, and the name of the staff officer or officers who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear or produce unless the deposition notice was accompanied by a Committee subpoena.

(2) Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Rule 5D.

(3) Oaths at depositions may be administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee staff. If a witness objects to a question and refuses to testify, the objection shall be noted for the record and the Committee staff may proceed with the remainder of the deposition.

(4) The Committee staff shall see that the testimony is transcribed or electronically recorded (which may include audio or audio/video recordings). If it is transcribed, the witness shall be furnished with a copy for review. No later than five days thereafter, the witness shall return a signed copy, and the chairman or designated staff officer shall enter the changes, if any, requested by the witness in accordance with subsection (E). If the witness fails to return a signed copy, the staff shall note on the transcript the date a copy was provided and the failure to return it. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the chief clerk of the Committee. Committee staff may stipulate with the witness to changes in the procedure; deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his obligation to testify truthfully.

RULE 6. COMMITTEE REPORTING PROCEDURES

A. *Timely filing.* When the Committee has ordered a measure or matter reported, following final action the report thereon shall be filed in the Senate at the earliest practicable time. (Rule XXVI, Sec. 10(b), Standing Rules of the Senate.)

B. *Supplemental, minority, and additional views.* A member of the Committee who gives notice of his intention to file supplemental, minority or additional views at the time of final Committee approval of a measure or matter, shall be entitled to not less than three calendar days in which to file such views, in writing, with the chief clerk of the Committee. Such views shall then be included in the Committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the Committee report may be filed and printed immediately without such views. (Rule XXVI, Sec. 10(c), Standing Rules of the Senate.)

C. *Notice by Subcommittee chairmen.* The chairman of each Subcommittee shall notify the chairman in writing whenever any measure has been ordered reported by such Subcommittee and is ready for consideration by the full Committee.

D. *Draft reports of Subcommittees.* All draft reports prepared by Subcommittees of this Committee on any measure or matter referred to it by the chairman, shall be in the form, style, and arrangement required to conform to the applicable provisions of the Standing Rules of the Senate, and shall be in accordance with the established practices followed by the Committee. Upon completion of such draft reports, copies thereof shall be filed with the chief clerk of the Committee at the earliest practicable time.

E. *Impact statements in reports.* All Committee reports, accompanying a bill or joint resolution of a public character reported by the Committee, shall contain (1) an estimate, made by the Committee, of the costs which would be incurred in carrying out the legislation for the then current fiscal year and for each of the next five years thereafter (or for the authorized duration of the proposed legislation, if less than five years); (2) a comparison of such cost estimates with any made by a Federal agency; or (3) a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(a), Standing Rules of the Senate.)

Each such report shall also contain an evaluation, made by the Committee, of the regulatory impact which would be incurred in carrying out the bill or joint resolution. The evaluation shall include (a) an estimate of the numbers of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses, (b) a determination of the economic impact of such regulation on the individuals, consumers, and businesses affected, (c) a determination of the impact on the personal privacy of the individuals affected, and (d) a determination of the amount of paperwork that will result from the regulations to be promulgated pursuant to the bill or joint resolution, which determination may include, but need not be limited to, estimates of the amount of time and financial costs required of affected parties, showing whether the effects of the bill or joint resolution could be substantial, as well as reasonable estimates of the recordkeeping requirements that may be associated with the bill or joint resolution. Or, in lieu of the forgoing evaluation, the report shall include a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(b), Standing Rules of the Senate.)

RULE 7. SUBCOMMITTEES AND SUBCOMMITTEE PROCEDURES

A. *Regularly establish Subcommittees.* The Committee shall have five regularly estab-

lished Subcommittees. The Subcommittees are as follows:

Permanent Subcommittee on Investigations.

Government Information and Regulation.

General Service, Federalism, and the District of Columbia.

Oversight of Government Management.

Federal Services, Post Office, and Civil Service.

B. *Ad hoc Subcommittees.* Following consultation with the ranking minority member, the chairman shall, from time to time, establish such ad hoc Subcommittees as he deems necessary to expedite Committee business.

C. *Subcommittee membership.* Following consultation with the majority members, and the ranking minority member of the Committee, the chairman shall announce selections for membership on the Subcommittees referred to in paragraphs A and B, above.

D. *Subcommittee meetings and hearings.* Each Subcommittee of this Committee is authorized to establish meeting dates and adopt rules not inconsistent with the rules of the Committee except as provided in Rule 7(E).

E. *Subcommittee subpoenas.* Each Subcommittee is authorized to adopt rules concerning subpoenas which need not be consistent with the rules of the Committee; *provided, however,* that in the event the Subcommittee authorizes the issuance of a subpoena pursuant to its own rules, a written notice of intent to issue the subpoena shall be provided to the chairman and ranking minority member of the Committee, or staff officers designated by them, by the Subcommittee chairman or a staff officer designated by him immediately upon such authorization, and no subpoena shall issue for at least 48 hours, excluding Saturdays and Sundays, from delivery to the appropriate offices, unless the chairman and ranking minority member waive the 48 hour waiting period or unless the Subcommittee chairman certifies in writing to the chairman and ranking minority member that, in his opinion, it is necessary to issue a subpoena immediately.

F. *Subcommittee budgets.* Each Subcommittee of this Committee, which requires authorization for the expenditure of funds for the conduct of inquiries and investigations, shall file with the chief clerk of the Committee, not later than January 10 of the first year of each new Congress, its request for funds for the two (2) 12-month periods beginning on March 1 and extending through and including the last day of February of the two following years, which years comprise that Congress. Each such request shall be submitted on the budget form prescribed by the Committee on Rules and Administration, and shall be accompanied by a written justification addressed to the chairman of the Committee, which shall include (1) a statement of the Subcommittee's area of activities, (2) its accomplishments during the preceding Congress detailed year by year, and (3) a table showing a comparison between (a) the funds authorized for expenditure during the preceding Congress detailed year by year, (b) the funds actually expended during that Congress detailed year by year, (c) the amount requested for each year of the Congress, and (d) the number of professional and clerical staff members and consultants employed by the Subcommittee during the preceding Congress detailed year by year and the number of such personnel requested for each year of the Congress. The chairman may request additional reports from the Subcommittees regarding their activities and budgets at any time during a Congress. (Rule XXVI, Sec. 9, Standing Rules of the Senate.)

RULE 8. CONFIRMATION STANDARDS AND PROCEDURES

A. *Standards.* In Considering a nomination, the Committee shall inquire into the nominee's experience, qualifications, suitability, and integrity to serve in the position to which he or she has been nominated. The Committee shall recommend confirmation, upon finding that the nominee has the necessary integrity and is affirmatively qualified by reason of training, education, or experience to carry out the functions of the office to which he or she was nominated.

B. *Information Concerning the Nominee.* Each nominee shall submit the following information to the Committee:

(1) A detailed biographical resume which contains information relating to education, employment and achievements;

(2) Financial information, including a financial statement which lists assets and liabilities of the nominee and tax returns for the 3 years preceding the time of his or her nomination, and copies of other relevant documents requested by the Committee, such as a proposed blind trust agreement, necessary for the Committee's consideration; and,

(3) Copies of other relevant documents the Committee may request, such as responses to questions concerning the policies and programs the nominee intends to pursue upon taking office.

At the request of the chairman or the ranking minority member, a nominee shall be required to submit a certified financial statement compiled by an independent auditor.

Information received pursuant to this subsection shall be made available for public inspection; *provided, however,* that tax returns shall, after review by persons designated in subsection (C) of this rule, be placed under seal to ensure confidentiality.

C. *Procedures for Committee inquiry.* The Committee shall conduct an inquiry into the experience, qualifications, suitability, and integrity of nominees, and shall give particular attention to the following matters:

(1) A review of the biographical information provided by the nominee, including, but not limited to, any professional activities related to the duties of the office to which he or she is nominated;

(2) A review of the financial information provided by the nominee, including tax returns for the three years preceding the time of his or her nomination;

(3) A review of any actions, taken or proposed by the nominee, to remedy conflicts of interest; and

(4) A review of any personal or legal matter which may bear upon the nominee's qualifications for the office to which he or she is nominated.

For the purpose of assisting the Committee in the conduct of this inquiry, a majority investigator or investigators shall be designated by the chairman and a minority investigator or investigators shall be designated by the ranking minority member. The chairman, ranking minority member, other members of the Committee and designated investigators shall have access to all investigative reports on nominees prepared by any Federal agency, except that only the chairman, the ranking minority member, or other members of the Committee, upon request, shall have access to the report of the Federal Bureau of Investigation. The Committee may request the assistance of the General Accounting Office and any other such expert opinion as may be necessary in conducting its review of information provided by nominees.

D. *Report on the Nominee.* After a review of all information pertinent to the nomination, a confidential report on the nominee shall be made to the chairman and the ranking minority member and, upon request, to any other member of the Committee. The report shall summarize the steps taken by the Committee during its investigation of the nominee and identify any resolved or questionable matters that have been raised during the course of the inquiry.

E. *Hearings.* The Committee shall conduct a public hearing during which the nominee shall be called to testify under oath on all matters relating to his or her suitability for office, including the policies and programs which he or she will pursue while in that position. No hearing shall be held until at least 72 hours after the following events have occurred: the nominee has responded to prehearing questions submitted by the Committee; and the report required by subsection (D) has been made to the chairman and ranking minority member, and is available to other members of the Committee, upon request.

F. *Action on confirmation.* A mark-up on a nomination shall not occur on the same day that the hearing on the nominee is held. In order to assist the Committee in reaching a recommendation on confirmation, the staff may make an oral presentation to the Committee at the mark-up, factually summarizing the nominee's background and the steps taken during the pre-hearing inquiry.

G. *Application.* The procedures contained in subsections (C), (D), (E), and (F) of this rule shall apply to persons nominated by the President to positions requiring their full-time service. At the discretion of the chairman and ranking minority member, those procedures may apply to persons nominated by the President to serve on a part-time advisory basis.●

TRIBUTE TO JAMES D. GORMLEY, BRIGADIER GENERAL, U.S. AIR FORCE (RETIRED) ON THE OCCASION OF HIS RETIREMENT AS PRESIDENT OF GENERAL AVIATION MANUFACTURERS ASSOCIATION

● Mr. McCAIN. Mr. President, I rise today to recognize the civilian and military service of my friend and fellow aviator, James D. Gormley, brigadier general, U.S. Air Force (retired) on the occasion of his retirement as president of the General Aviation Manufacturers Association [GAMA], a national trade association that represents the interests of our domestic general aviation airframe, engine, avionics, component and service manufacturers.

Jim joined GAMA in April 1981 following a distinguished career in the U.S. Air Force. He held the post of vice president for government relations with GAMA from 1981 to January 1990 and served as their chief lobbyist on many issues of import and impact to the general aviation industry. We fought, and are continuing to do so, side by side to reform the product liability situation which has devastated

the production of small aircraft in this country. Jim was also instrumental in opposing the repeal of the investment tax credit and the imposition of the burdensome luxury tax on private aircraft. In addition to his lobbying duties, Jim was the lead GAMA official on international trade issues and policies, serving with distinction on the Department of Commerce's Industry Sector Advisory Committee [ISAC] for Aerospace. Jim was appointed its vice chairman and spearheaded the successful campaign to influence Brazil to reduce its import duties on United States manufactured airplanes. As the negotiations with Brazil peaked, Jim was designated to head the Department of Commerce's quick reaction team which provided timely industry input on tariffs to the United States Trade Representative.

In January 1990, Jim was appointed president of GAMA. In this capacity he served as the strong link between the GAMA board and the GAMA staff. He has been unwavering in his effort to gain product liability reform, in spite of formidable opposition. In the fall of 1990, when it looked like a 10-percent luxury tax on the sale of new private aircraft would bring the industry to its knees, Jim was instrumental in orchestrating the business exemptions associated with the final legislation. Had the budget agreement not included these exemptions, many experts suggested that the sale of new aircraft would be severely impacted for the next 5 to 10 years. Jim also directed the effort to gain congressional funding for follow-on research by the Federal Aviation Administration [FAA] on high intensity radiated fields [HIRF] aimed at providing rational airworthiness criteria.

Prior to joining GAMA, Jim served with distinction for 28 years in the U.S. Air Force during peace and war, retiring with the rank of brigadier general. He was commissioned in 1953 through the Reserve Officers' Training Corps Program and received his pilot wings at Greenville Air Force Base, MS, in October 1954. From 1955 to 1957, he served in Japan.

In October 1957, Jim was assigned to Ellsworth Air Force Base, SD, where he served as an interceptor pilot and flight commander with the 54th Fighter-Interceptor Squadron. He transferred to the 5th Fighter-Interceptor Squadron, Minot Air Force Base, ND in November 1960. Then in April 1964, Jim moved to Tyndall Air Force Base, FL as chief, 4756 Combat Crew Training Squadron's F-106 academics section.

In December 1966, Jim entered F-105 training at Nellis Air Force Base, NV and in June 1967 was assigned to the 333d Tactical Fighter Squadron, Takhli Royal Thai Air Force Base, Thailand. While there, Jim flew 100 fighter missions over North Vietnam including 49 over Hanoi. During one of these missions, Jim led one of the largest fighter-bomber missions of the war. During the initiation of the attack, Jim flew his F-105 in first to suppress the anti-aircraft capability of the enemy allowing the other aircraft to find their targets. Even though Jim had numerous holes in his aircraft, he was able to bring all his crews back safely from this successful operation.

Jim was assigned in April 1968 to Pacific Command Headquarters at Camp Smith, HI, where he served as aide to the commander-in-chief, Pacific. In June 1970, he returned to attend the Air War College. Following his graduation in May 1971, Jim came to Washington and was assigned to the Office of the Chief of Legislative Liaison of the Air Force and served as the chief, Senate Liaison Office. During the next 4 years, Jim became acquainted with nearly every Member of the U.S. Senate and provided worldwide military escort for many of them. This service is available to a congressional delegation, especially when traveling to several countries on one trip or to underdeveloped areas.

From May 1975 until January 1977, Jim was the vice commander, 93d Bombardment Wing, Castle Air Force Base, CA. He returned to Minot Air Force Base as commander of the 5th Bombardment Wing from January 1977 to September 1978 when he became commander of the 57th Air Division. Following this assignment, Jim returned to Washington to serve as the Deputy Director of Air Force Legislative Liaison until his retirement on April 1, 1981.

Jim was a military command pilot with more than 4,000 flying hours in a variety of aircraft. His military decorations and awards include the Silver Star, Legion of Merit, Distinguished Flying Cross with oak leaf cluster, Air Medal with 10 oak leaf clusters, Joint Service Commendation Medal and the Air Force Commendation with 2 oak leaf clusters.

Following his retirement, Jim and his wife Jan intend to relocate to Florida where they will be closer to their children and take advantage of a longer golf season. I join my colleagues in saying thank you to Jim and Jan for a career of dedication to duty and devotion to this country that we all love. I wish you and your family well as you embark on this well deserved reward for your many years if selfless service.•

U.S.S.R. TESTING MORATORIUM

• Mr. SIMON. Mr. President, things have moved so quickly and dramatically on the international scene that the question of nuclear testing seems to have been pretty much lost and left behind.

I hope it is not left behind.

We could make a significant step forward if the United States and the Soviet Union were to agree that we would not have any future nuclear tests as long as no other nation had such tests, and we ought to then lead in getting virtually all the nations of the world to sign such an agreement.

What reminded me once again of the importance of this is an item that appeared in Izvestiya, the translation of which I have just received, which points out that the Soviets have proclaimed a 1-year moratorium on all nuclear explosions. It just baffles me that we do not use the common sense to do the same—saving money and, at the same time, giving greater hope to humanity.

Mr. President, I ask to insert the Izvestiya article into the RECORD at this point.

The article follows:

NOVAYA ZEMLYA TEST SITE: PAST, PROSPECTS

On instructions from President B. Yeltsin a ban for one year has been imposed on nuclear tests on the territory of Russia. M. Gorbachev has proclaimed a one-year moratorium on thermonuclear explosions. And what comes afterwards? What is the fate that awaits the Novaya Zemlya nuclear test site and the Russian North?

Exactly one year ago the last—the 132d—nuclear explosion was heard on Novaya Zemlya. It has already become history. But today, alarming new facts are being presented: an accident aboard a nuclear submarine in the White Sea, nuclear graveyards around Novaya Zemlya, the archipelago that is the country's only nuclear test site. Perhaps this is all too much for wounded Nature in the North?

The accident aboard the nuclear submarine occurred late in September during a training launch of a solid-fuel missile in the area where training launches are conducted. To judge from the official statements, none of the crew was injured and there was no accidental spillage into the sea. The chief of staff of the Belomorsk Flotilla, Admiral N. Pakhomov, claims that "no harm was done to people, the sea, or animals."

There is no reason not to believe this almost ideal picture, although some lines (and quite significant ones) have not been filled in. Why, for example, did the public learn about what had happened only some days later, and not from official sources but almost by chance, through rumors?

"I personally learned about the accident only on 2 October, from the local newspapers," the chief of the Arkhangelsk administration, P. Balakshin, told me. "I immediately contacted Admiral Chernavin, and he assured me that nothing serious had occurred."

But a map of the burial sites on Novaya Zemlya was published recently. It was passed to journalists at a briefing in Moscow by USSR People's Deputy A. Zolotkov.

The map shows all the gulfs and bays on the northern archipelago, and also the regions of the Kara Sea, where ships of the Murmansk Steamship Line have been dumping radioactive waste over the past two decades. This report literally stunned readers, since for many years the experts have been claiming that there are no nuclear burial sites in the northern seas. It turns out that this was untrue.

By studying the shipping documents the people's deputy was able to reveal secret trips and the nature of the cargo. Some 11,000

containers with equipment from nuclear reactors, radioactive structures, concrete blocks, and other dangerous waste lie at the bottom of the sea and have perhaps already been eroded by the active sea water. The content of the containers was not vitrified or encased in concrete or bitumen before it was dumped.

Naturally, all of this was done in secret, behind the backs not only of ordinary Northerners, whose opinion the military has never considered, but also the local environmental organizations, and even the oblast leadership. The local authorities learned about the presence of nuclear burial sites around Novaya Zemlya only from the newspapers.

We involuntarily think of the last nuclear explosion that thundered across Novaya Zemlya exactly a year ago, and caused a great deal of noise. In Arkhangelsk they learned about it from a TASS report, even though on the day before, at a meeting with USSR people's deputies from the northern territories with the leadership of the test site, it had been agreed that the local authorities would be notified in advance of the time of the upcoming test. An attempt had been made by the people of Novaya Zemlya to communicate with neighboring regions, but the mechanism used to notify them was not working, and force of habit was stronger than the agreement, so that again the nuclear explosion was a surprise.

So what occurred aboard the nuclear submarine in the White Sea, and how safe is the radiation situation around the burial sites round Novaya Zemlya, and what is the program for further nuclear tests at the northern test site? For it was not a reserve, or backup site, as some representatives depicted it earlier.

In terms of total yield in all tests (87 in the atmosphere, three underwater, and 42 underground), the test site in the Arctic beats all world records. The most intensive periods of testing on Novaya Zemlya were in 1958 (26 explosions in the atmosphere and one underwater), and in 1961 and 1962 (24 and 36 tests respectively, all in the atmosphere). And the aggregate expressed in TNT equivalents from the fission alone exceeds 90 megatons.

No existing or former test site in the world has been subjected to such a colossal load. In 1961–1962, when the nuclear powers were engaged in a senseless race, a real nuclear bacchanalia got under way in the Arctic as one atmospheric test succeeded another. On 30 October 1961 the most powerful nuclear explosion, with a yield of 58 megatons, was set off above the archipelago. Seven of the most powerful explosions on Novaya Zemlya during that period were equal to the yields of all the atmospheric tests conducted by all the other nuclear powers during the period 1945 through 1980. . .

These figures never appeared in the Soviet press. They have been generalized on the basis of many foreign sources by USSR People's Deputy Aleksandr Yemelyanenkov and Candidate of Technical Sciences Vladimir Yakimets, adviser to the president of the "Nevada-Semipalatinsk" antinuclear movement. The conclusion that begs itself is this: The Northern archipelago and the neighboring territory has already been subjected to dangerous ecological risk, and a serious scientific research study should be made of it.

Last week I was at the test site in Semipalatinsk. At particular places, for example, at the site of the first thermonuclear or "Sakharov" explosion, the instruments showed a radiation background hundreds of times higher than the natural radiation background, even though in the opinion of the military it is quite safe. But what can be said about the northern archipelago, where the most powerful atmospheric tests were conducted?

Today, all eyes have been turned to Novaya Zemlya. The one-year moratorium proclaimed by USSR President M. Gorbachev and the ukase of Russian Soviet Federated Socialist Republic President B. Yeltsin give grounds for hope that in the coming months there will be no explosions. But what then? What will be the military's subsequent attitude toward the territory?

The head of the Arkhangelsk administration, P. Balakshin, has sent M. Gorbachev and B. Yeltsin a telegram which, in addition to the natural dissatisfaction with the latest events, contains a demand for a study of the situation and the transfer of relations between the territory and the military onto a firm legal footing. Preparations are now under way for a session of the oblast Council on the Ecology, where these issues will be voiced, it is suggested, even more sharply.

The traditional doggedness of our military and their desire to reach compromises only when they will not "forgo principles," which has been used in the past but is no longer possible, is sometimes surprising.

At Semipalatinsk they moved to meet the public only when it became clear that under pressure from antinuclear sentiments the site would have to be closed down. This can also be expected on Novaya Zemlya if the military's attitude toward the territory remains the same. There are no anti-Army movements in the North, but having assumed (at least for the time being) the entire burden of nuclear testing, this previously quiet region is ready to take up the baton of stormy antinuclear actions. As in Semipalatinsk, they do not want to have to experience the nuclear fear, and they want to know the truth about the test site.

It is now extremely important to determine whether or not Russia wants to remain at the test site in order to maintain the country's nuclear potential at the level needed for military parity. If the republic Supreme Soviet decides that it does, then it would be necessary immediately to work out and legitimize the legal relationship between the territory and the military, and the interests of the former should be considered unconditionally and absolutely, otherwise no one will tolerate the test site on his own territory.

It is also possible to understand the military, who ensure nuclear combat capability and now find themselves in an indeterminate kind of situation: On the one hand anti-nuclear sentiments are gathering strength and demands are heard to close down the test sites, while on the other there is a confirmed nuclear program that as military people they must pursue. This is why it would seem extremely necessary for the USSR Supreme Soviet to pass a law on nuclear testing, while on the basis of the Russian parliament, the legal status of the test site could be defined.

The Northerners are patient. This is also being confirmed now, when alarming facts are being reported from all sides. But everything has its limits, the more so when these facts are truly alarming. An antinuclear movement is gathering strength here and there is talk of the demilitarization of the northern seas, which are saturated with weapons and dangerous waste. Demands are being heard for an investigation by deputies of the causes and consequences of the accident aboard the submarine in the White Sea, with subsequent publication of all the figures in the press. The region is waking up * * *.●

IN TRIBUTE TO ANTONIO C. TROVATO

● Mr. CHAFEE. Mr. President, I rise today to pay tribute to Antonio Trovato of Westerly, RI. Tony Trovato was honored for his outstanding community service on Saturday, May 4, 1991, at the Calabrese Club in that town.

Tony Trovato was born in Westerly on February 1, 1925. As a youth, he attended the Westerly public schools and is a graduate of the Cheshire Academy. Thereafter, Tony attended Rhode Island State College, now the University of Rhode Island, and studied clothing design in New York City. He graduated from the American Gentleman Designing School.

As a citizen of Westerly, Tony Trovato has been an invaluable asset to the community. He has been an active civic leader, serving as State senator, beach commissioner, and district moderator, as well as a member of the town council. In addition, he has given of his time and talents as a volunteer for 20 years at Westerly Hospital. These activities demonstrate Tony's sincerity, commitment, and love for his neighbors and the community.

I join with all the people of Westerly in saluting Antonio Trovato and wishing him great success and happiness in the years ahead.●

WAS EARNINGS TEST ACT OF POLITICAL COWARDICE?

● Mr. McCAIN. Mr. President, on November 12, the Senate adopted an amendment I offered during consideration of the Older Americans Act reauthorization bill that would repeal the Social Security earnings test.

Some have tried to label this action as political cowardice on the part of this body—that no Member wanted to vote against the elderly. And that this was an election year ploy. I strongly disagree.

What the Senate did on November 12 was an exercise in clear-headed judgment. In adopting my amendment, the Senate said that its high time that the last bastion of age discrimination be eliminated—something which a lot of us have been advocating for years.

This is an issue of fairness—it is proseniors, progrowth and projobs. It is inexcusable that this Nation punishes those elderly who either want or have to work, and seniors all over this country couldn't agree more.

Among the letters of appreciation I have received since November 12 is one from Martha McSteen. She is a former Social Security Commissioner under Ronald Reagan, and currently president of the National Committee to Preserve Social Security and Medicare—

one of our leading national seniors organizations.

I ask unanimous consent that the full text of this letter be included in the RECORD at this time.

The letter follows:

NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE,
Washington, DC, November 19, 1991.

Hon. JOHN MCCAIN,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: The National Committee to Preserve Social Security and Medicare strongly endorses your amendment to the Older Americans Act which would eliminate the Social Security retirement test for beneficiaries age 65-69.

Senior citizens with generous pensions or profitable investments don't lose lifetime Social Security benefits. Why should senior citizens who work? Our senior citizens deserve the fairness of a system that provides them with independence, dignity and the opportunity to remain a productive part of the American workforce.

Social Security has evolved over time. Clearly, Congress has recognized that Social Security is not only an insurance against the income loss of retirement and that is why it has periodically voted to support the liberalization of the earnings test.

Concerns about the impact of eliminating the retirement test on the Social Security trust funds are misplaced. CBO projects a cost of $3.9 billion in 1992—about 6 percent of the $59.6 billion surplus. Social Security will still have over $1 trillion in reserves by the end of this decade even if your amendment is enacted into law. And most of the cost is in the short term. The long-term cost is negligible.

CBO estimates also do not take into account the changes that would occur from repealing the earnings test. One, the Trust Fund would save $50 to $100 million a year in administrative expenses by eliminating the earnings test. And second, repeal would encourage over 700,000 retirees to increase their work effort.

According to Aldona and Gary Robbins in their report, Paying People Not To Work, "our annual output of goods and services would increase by at least $15.4 billion and government revenue would increase by $4.9 billion, more than offsetting the additional Social Security benefits that would be paid." The estimates of the number of people who would increase work effort are consistent with surveys by the Commonwealth Fund that indicate that 1.6 million seniors age 65-69 are ready and able to work.

Thank you for your efforts on behalf of senior citizens. If there is anything else I can do to help, please let me know.

Sincerely,

MARTHA A. MCSTEEN,
President.

Mr. MCCAIN. The Senate's action on November 12 has also been praised by a number of leading newspapers across the country. Among them is the Los Angeles Times.

I ask unanimous consent that the full text of this editorial be included in the RECORD at this time.

The article follows:

[From The Los Angeles Times, Nov. 17, 1991]

WHY PUSH THEM OUT OF WORK?

There are more than 40 million Americans age 60 or older, many of whom are eager to work beyond normal retirement age but can't afford to, thanks to an outmoded earnings test applied to Social Security recipients. The Senate, in a provision attached to the extension of the Older Americans Act, has voted to eliminate this punitive restriction. The measure now goes to a congressional conference committee, where House conferees will have a chance to accept the Senate's provision. They should do so, and the House should adopt it. Millions of workers would be the better for it, and so would government and society.

Current law says that people between the ages of 65 and 70 who draw Social Security and who earn more than $9,720 a year must lose $1 in Social Security benefits for every $3 they earn over that limit. This rule effectively applies to those workers a 33 percent marginal tax rate—higher than anyone else must pay—but there is more. Senator John McCain (R-Ariz.) says that when federal, state and other Social Security taxes are factored in, the tax bite approaches nearly 70%. If that isn't age discrimination, McCain suggests, nothing is.

There is no earnings ceiling for Social Security recipients age 70 and older. It's nonsensical to have one for those younger. Maintaining the arbitrary ceiling and taxing away 33 cents out of every dollar earned from those who exceed it drives millions of productive workers into forced retirement. The nation's economy is not so robust that it can afford to lose willing, able and experienced employees. Federal and state treasuries are not so flush they can pass up the revenues that could be had from taxes on the higher earnings of older workers.

Why chase people who want to work out of the labor force? Why make this pool of talent lie stagnant? The earnings ceiling is an echo of an earlier time when it was argued that older workers had to be pushed into retirement to make jobs available for new entrants into the work force. Demographics and the needs of the economy have changed. Millions of those older workers want to go on working without being punished if they earn too much. The time has come to let them do so.

Mr. MCCAIN. Some claim that repeal costs money and will contribute to the Federal deficit.

The CBO cost estimate, however, only takes into account the benefits that would be paid from Social Security to those who had earned them. Experts who have performed dynamic estimates, such as the Institute for Research on the Economics of Taxation and the National Center for Policy Analysis, have determined that the proposal is actually good for the economy—it will result in increased Social Security revenues. It will also result in income tax revenues increasing by $4.9 billion in the first year, lead to the production of at least $15 billion in goods and services, and result in at least 500,000 seniors staying in or coming back to the work force.

With regard to the deficit issue, it is important for people to remember that last year's budget agreement took Social Security off-budget and out of the Federal deficit calculations. Thus, this amendment does not contribute to the deficit at all.

The fact that there was no budget point of order raised against my amendment is a testament to the fact that the Senate recognized that this amendment did not cost money or contribute to the Federal deficit.

This is now in conference, where the House and Senate will decide how to proceed—as the House's version of the Older American Act reauthorization bill did not include a proposal to repeal the Social Security earnings test.

There is some possibility, however, that this issue will be dealt with on the House floor before it is considered in the conference, as a motion to commit the conferees to the Senate position may come to the House floor for a vote today.

Mr. President, just as was the case with the effort to repeal the surtax under the Medicare Catastrophic Coverage Act 2 years ago, the attention of this Nation's seniors is once again focused on Congress.

The act of political cowardice on the part of the conference committee would be to drop this measure in conference. It is the hope of this Nation's seniors that the conference committee will exercise the same clear-headed judgement exercised in the Senate on November 12.●

IN TRIBUTE TO E. RAYMOND BENWAY

● Mr. CHAFEE. Mr. President, I rise today to pay tribute to Mr. E. Raymond Benway of Newport, RI. Mr. Benway is this year's recipient of the Veteran of the Year Award presented by the Benevolent and Protective Order of Elks, Newport Lodge No. 104.

The Newport Elks have been active since 1888. Their organization has a distinguished record of involvement in numerous charitable activities that have benefited veterans, children, the handicapped, and the sick and aged. Each year, the lodge presents its Veteran of the Year Award to a local veteran, in recognition of that person's outstanding service to the country and fellow citizens.

Raymond Benway has a long and distinguished record of service. His 30-year career as a member of the U.S. Navy and U.S. Coast Guard began in Newport in 1943. He served throughout World War II aboard naval vessels, participating in combat missions in the Pacific, including the Marianas, Leyte Gulf, the Marshall Islands, New Guinea, and Bougainville in the Solomon Islands. In 1950, Mr. Benway joined the Coast Guard, in which he served until retirement in 1973. His duties included work at the Castle Hill Light Station in Newport, and assignment to a Coast Guard division in Vietnam. Mr. Benway has received numerous decorations in recognition of his excellent military service.

Retirement did not slow Raymond Benway down. Since that time, his energy and enthusiasm have contributed

to the efforts of many local organizations. He is active in the Veterans of Foreign Wars, Post 4487, Middletown, RI, and the Fleet Reserve Organization, Branch 19, Newport, RI. In addition, in 1967–68, he served as exalted ruler of the Newport Lodge of Elks, and he is currently the chairman of the Flag Day committee and the Memorial Sunday committee, and a member of the veterans committee.

Raymond Benway's life has been marked by service to country and community. Wherever he has been, whether in defense of his homeland on the world's seas, or helping those in need in his own city, Raymond Benway has provided a fine example for others. I applaud the Newport Lodge of Elks for selecting Mr. Benway as veteran of the year, and I ask my colleagues in the U.S. Senate to join me in extending to him our heartiest congratulations and best wishes for the future.●

SEQUENTIAL REFERRAL

Mr. DODD. Mr. President, as if in executive session, I ask unanimous consent that the nomination of Arnold R. Thompkins to be Chief Financial Officer reported today by the Committee on Finance be referred to the Committee on Governmental Affairs for a period not to exceed 20 days.

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

WOMEN' BUSINESS DEVELOPMENT ACT OF 1991

Mr. DODD. Mr. President, I ask unanimous consent that the Small Business Committee be discharged from further consideration of H.R. 2629, a bill relating to women in small business, and that the Senate proceed to its immediate consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2629) to amend the Small Business Act to assist the development of small business concerns owned and controlled by women, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO 1363

(Purpose: To provide a substitute)

Mr. DODD. Mr. President, on behalf of Mr. BUMPERS, 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 Connecticut [Mr. DODD], for Mr. BUMPERS (for himself and Mr. KASTEN), proposes an amendment numbered 1363.

Mr. DODD. 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:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Women's Business Development Act of 1991".

SEC. 2. WOMEN'S DEMONSTRATION PROJECTS.

The Small Business Act is amended by adding at the end the following new section:

"SEC. 28. (a) The Administration may provide financial assistance to private organizations to conduct 3-year demonstration projects for the benefit of small business concerns owned and controlled by women. The projects shall provide—

"(1) financial assistance, including training and counseling in how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and managing cash flow and other financial operations of a business concern;

"(2) management assistance, including training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

"(3) marketing assistance, including training and counseling in identifying and segmenting domestic and international market opportunities, preparing and executing marketing plans, developing pricing strategies, locating contract opportunities, negotiating contracts, and utilizing varying public relations and advertising techniques.

"(b)(1) As a condition of receiving financial assistance authorized by this section, the recipient organization shall agree to obtain, after its application has been approved and notice of award has been issued, cash contributions from non-Federal sources as follows:

"(A) If the project first receives its Federal financial assistance prior to fiscal year 1993, an annual amount that is not less than the amount of the Federal financial assistance provided each year.

"(B) If the project first receives Federal financial assistance in fiscal year 1993, or thereafter, annual amounts equal to—

"(i) in the first year, 1 non-Federal dollar for each 2 Federal dollars;

"(ii) in the second year, 1 non-Federal dollar for each Federal dollar; and

"(iii) in the third and final year, 2 non-Federal dollars for each Federal dollar.

"(2) Up to one-half of the non-Federal matching assistance may be in the form of in-kind contributions which are budget line items only, including but not limited to office equipment and office space.

"(3) The financial assistance authorized pursuant to this section may be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement. The Administration may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after notice of the award has been issued and before the non-Federal matching funds are obtained.

"(4) If any recipient of assistance under this section fails to obtain the required non-Federal contribution during any year of any project, it shall not be eligible thereafter for advance disbursements under paragraph (3) during the remainder of that project, or for any other project for which it is or may be funded. In addition, prior to approving assistance to such organization for any other projects, the Administration shall specifically determine whether the Administration believes that the recipient will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

"(c) Each applicant for assistance under this section initially shall submit a 3-year plan on proposed fundraising and training activities, and may receive financial assistance under this section for a maximum of 3 years per site. The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. The criteria shall include—

"(1) the experience of the applicant in conducting programs or on-going efforts designed to impart or upgrade the business skills of women business owners or potential owners;

"(2) the present ability of the applicant to commence a demonstration project within a minimum amount of time; and

"(3) the ability of the applicant to provide training and services to a representative number of women who are both socially and economically disadvantaged.

"(d) For purposes of this section, the term 'small business concern' means a small business concern, either start-up or existing, owned and controlled by women, and—

"(1) which is at least 51 percent owned by 1 or more women; and

"(2) the management and daily business operations of which are controlled by 1 or more women.

"(e) There are authorized to be appropriated $4,000,000 for each fiscal year to carry out the demonstration projects authorized by this section. Notwithstanding any other provision of law, the Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this section, except that it shall ensure that all eligible sources are provided a reasonable opportunity to submit proposals.

"(f) The Administration shall prepare and transmit an annual report, beginning February 1, 1992, to the Committees on Small Business of the Senate and House of Representatives on the effectiveness of all demonstration projects conducted under the authority of this section. Such report shall provide information concerning—

"(1) the number of individuals receiving assistance;

"(2) the number of start-up business concerns formed;

"(3) the gross receipts of assisted concerns;

"(4) increases or decreases in profits of assisted concerns; and

"(5) the employment increases or decreases of assisted concerns.

"(g) The Administration shall not provide financial assistance under this section to any new project after October 1, 1995, except that it may fund projects which commenced prior thereto.".

SEC. 3. ADMINISTRATIVE PROVISION.

Section 8 of the Small Business Act (15 U.S.C. 637) is amended by striking subsection (c) and redesignating subsections (d) through (j) as subsections (c) through (k). Projects funded pursuant to the provisions of former subsection (c) shall be deemed to be funded

under and shall be treated as if funded under section 28 of the Small Business Act, as added by section 2.

SEC. 4. PERMANENT AUTHORIZATION OF SMALL LOAN PROGRAM.

Section 7(a)(19)(B) of the Small Business Act (15 U.S.C. 636(a)(19)(B)) is amended by striking "during fiscal years 1989, 1990, and 1991,".

SEC. 5. NATIONAL WOMEN'S BUSINESS COUNCIL.

Subparagraph (G) of section 403(b) of the Women's Business Ownership Act of 1988 (102 Stat. 2695) is amended to read as follows:

"(G) The Chairperson and Vice Chairperson of the council shall be designated by the President and may be either a representative of the public sector or the private sector, except that the Chairperson and Vice Chairperson shall not be from the same sector concurrently. Each shall serve for a maximum term of 2 years. No person may be designated to the same office for 2 consecutive terms, nor may consecutive designees as Chairperson be from the public sector.".

Mr. BUMPERS. Mr. President, on H.R. 2629 is the Women's Business Development Act of 1991, which passed the House on October 8, 1991. It came to the Senate and was referred to the Senate Committee on Small Business. By unanimous consent, the bill was discharged from the committee's jurisdiction and brought to the floor for vote. At this time, Senator KASTEN and I wish to offer a substitute amendment to H.R. 2629, which is essentially the women's business development bill as passsed by the House with two changes.

One change expands potential sources of matching contributions for entities receiving grants under the women's demonstration projects to permit State and local contributions as well as contributions from private sources. This change will enable grantees to develop ties to State and local funding sources, which should improve their likelihood of success after completion of its program term. The other change retains the size of the existing women's business council by deleting House provisions which would have expanded its membership from 9 to 11 members. The council had 2 years remaining in its authorization and is charged with preparing a final report in that time. Increasing its membership at this juncture will complicate that process and increase its costs. Both of which are unwelcome changes at this time.

The House-passed women's business development bill makes changes to their small business programs:

First, SBA's women's demonstration project grants;

Second, the women's business council; and

Finally, SBA's small loan program.

All three were originally authorized by the Women's Business Ownership Act of 1988, and both the authority for women's demonstration project grants and the small loan program expired September 30, 1991. This reauthorization is necessary to enable SBA to make additional technical assistance grants for women-owned business and to operate its small loan program, which encourages SBA guarantees or small business loans under $50,000.

H.R 2629 will extend SBA's authority to award technical assistance grants for training projects for women-owned businesses until October 1, 1995, 4 years from the original sunset date. It will also authorize an appropriation of $4 million per year.

In addition, H.R. 2629 will limit the length of the grants to 3 years per training site and will change the funding formula for the grants to permit the private grantee to commit proportionately less of its funds in the first year of program participation and to increase that percentage as it progresses through its 3-year program term. The bill permits up to one-half of the matching contribution to be in-kind contributions.

The second small business program affected by H.R. 2629 is the women's business council. Although the bill does not extend the term of the council, which will expire on October 1, 1993, it does make a number of organization changes to the women's business council:

Limiting the terms of the chairman and vice chairman to 2 years each;

Prohibiting consecutive 3-year terms for any member of the Council:

Prohibiting consecutive terms for the same position by representatives of the private sector; and

Prohibiting the positions of chairman and vice chairman from being held simultaneously by individuals from the private sector or from the public sector.

Finally, H.R. 2629 will permanently authorize SBA's small loan program, which expired on October 1 of this year. The Small Loan Program permits a Bank to retain one-half of the 2-percent guaranty fee on a small business loan of $50,000 or less. This program encourages banks to make loans of $50,000 or less, which they might otherwise avoid because of high administrative costs. The small loan program is an important aid to small businesses, especially in this recessionary economy, and should be reauthorized.

The PRESIDING OFFICER. If there be no further debate the question is on agreeing to the amendment.

The amendment (No. 1363) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was 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. 2629) as amended, was passed.

Mr. DODD. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT TO CZECHOSLOVAKIA AND HUNGARY

Mr. DODD. Mr. Presidnt, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 1724.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 1724) entitled "An Act to provide for the termination of the application of title IV of the Trade Act of 1974 to Czechoslovakia and Hungary," with the following amendment:

Page 3, after line 17, of the Senate engrossed amendment, insert:

SEC. 4. REPEAL OF THE PROHIBITION ON THE IMPORTATION OF SOVIET GOLD COINS.

Section 510 of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5100) is repealed.

TITLE I—EXTENSION OF NONDISCRIMINATORY TREATMENT TO ESTONIA, LATVIA, AND LITHUANIA.

SEC. 101. CONGRESSIONAL FINDINGS.

The Congress finds the following:

(1) The Government of the United States extended full diplomatic recognition to Estonia, Latvia, and Lithuania in 1922.

(2) The Government of the United States entered into agreements extending most-favored-nation treatment with the Government of Estonia on August 1, 1925, the Government of Latvia on April 30, 1926, and the Government of Lithuania on July 10, 1926.

(3) The Union of Soviet Socialist Republics incorporated Estonia, Latvia, and Lithuania involuntarily into the Union as a result of a secret protocol to a German-Soviet agreement in 1939 which assigned those three states to the Soviet sphere of influence; and the Government of the United States has at no time recognized the forcible incorporation of those states into the Union of Soviet Socialist Republics.

(4) The Trade Agreements Extension Act of 1951 required the President to suspend, withdraw, or prevent the application of trade benefits, including most-favored-nation treatment, to countries under the domination or control of the world Communist movement.

(5) In 1951, responsible representatives of Estonia, Latvia, and Lithuania stated that they did not object to the imposition of "such controls as the Government of the United States may consider to be appropriate" to the products of those countries, for such time as those countries remained under Soviet domination or control.

(6) In 1990, the democratically elected governments of Estonia, Latvia, and Lithuania declared the restoration of their independence from the Union of Soviet Socialist Republics.

(7) The Government of the United States established diplomatic relations with Estonia, Latvia, and Lithuania on September 2, 1991, and on September 6, 1991, the State Council of the transitional government of the Union of Soviet Socialist Republics recognized the independence of Estonia, Latvia, and Lithuania, thereby ending the involun-

tary incorporation of those countries into, and the domination of those countries by, the Soviet Union.

(8) Immediate action should be taken to remove the impediments, imposed in response to the circumstances referred to in paragraph (5), in United States trade laws to the extension of nondiscriminatory treatment (most-favored-nation treatment) to the products of those countries.

(9) As a consequence of establishment of United States diplomatic relations with Estonia, Latvia, and Lithuania, these independent countries are eligible to receive the benefits of the Generalized System of Preferences provided for in title V of the Trade Act of 1974.

SEC. 102. EXTENSION OF NONDISCRIMINATORY TREATMENT TO THE PRODUCTS OF ESTONIA, LATVIA, AND LITHUANIA.

(a) IN GENERAL.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) or any other provision of law, nondiscriminatory treatment (most-favored-nation treatment) applies to the products of Estonia, Latvia, and Lithuania.

(b) CONFORMING TARIFF SCHEDULE AMENDMENTS.—General Note 3(b) of the Harmonized Tariff Schedule of the United States is amended by striking out "Estonia", "Latvia", and "Lithuania".

(c) EFFECTIVE DATE.—Subsection (a) and the amendments made by subsection (b) 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.

SEC. 103. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO THE BALTICS.

Title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.) shall cease to apply to Estonia, Latvia, and Lithuania effective as of the 15th day after the date of the enactment of this Act.

SEC. 104. SENSE OF THE CONGRESS REGARDING PROMPT PROVISION OF GSP TREATMENT TO THE PRODUCTS OF ESTONIA, LATVIA, AND LITHUANIA.

It is the sense of the Congress that the President should take prompt action under title V of the Trade Act of 1974 to provide preferential tariff treatment to the products of Estonia, Latvia, and Lithuania pursuant to the Generalized System of Preferences.

TITLE II—TRADE PREFERENCE FOR THE ANDEAN REGION

SEC. 201. SHORT TITLE.

This title may be cited as the "Andean Trade Preference Act".

SEC. 202. AUTHORITY TO GRANT DUTY-FREE TREATMENT.

The President may proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of this title.

SEC. 203. BENEFICIARY COUNTRY.

(a) DEFINITIONS.—For purposes of this title—

(1) The term "beneficiary country" means any country listed in subsection (b)(1) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title.

(2) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(3) The term "HTS" means Harmonized Tariff Schedule of the United States.

(b) COUNTRIES ELIGIBLE FOR DESIGNATION; CONGRESSIONAL NOTIFICATION.—(1) In designating countries as beneficiary countries under this title, the President shall consider only the following countries or successor political entities:

Bolivia
Ecuador
Colombia
Peru.

(2) Before the President designates any country as a beneficiary country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(c) LIMITATIONS ON DESIGNATION.—The President shall not designate any country a beneficiary country under this title—

(1) if such country is a Communist country;

(2) if such country—

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify—

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of,

a United States citizen or a corporation, partnership, or association, which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, and if such preferential treatment has, or is likely to have, a significant adverse effect on United States commerce, unless the President—

(A) has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and

(B) reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent or such country fails to work towards the provision of adequate and effective protection of intellectual property rights;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 502(a)(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this title if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(d) FACTORS AFFECTING DESIGNATION.—In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979;

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to protect its own economic development;

(8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights;

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(11) whether such country has met the narcotics cooperation certification criteria set forth in section 481(h)(2)(A) of the Foreign Assistance Act of 1961 for eligibility for United States assistance; and

(12) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this Act.

(e) WITHDRAWAL OR SUSPENSION OF DESIGNATION.—(1) The President may—

(A) withdraw or suspend the designation of any country as a beneficiary country, or

(B) withdraw, suspend, or limit the application of duty-free treatment under this title to any article of any country,

if, after such designation, the President determines that as a result of changed circumstances such a country should be barred from designation as a beneficiary country.

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days before taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action—

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register—

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(f) TRIENNIAL REPORT.—On or before the 3rd, 6th, and 9th anniversaries of the date of the enactment of this title, the President shall submit to the Congress a complete report regarding the operation of this title, including the results of a general review of beneficiary countries based on the considerations described in subsections (c) and (d). In reporting on the considerations described in subsection (d)(11), the President shall report any evidence that the crop eradication and crop substitution efforts of the beneficiary are directly related to the effects of this title.

SEC. 204. ELIGIBLE ARTICLES.

(a) IN GENERAL.—(1) Unless otherwise excluded from eligibility by this title, the duty-free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of—

(i) the cost or value of the materials produced in a beneficiary country or 2 or more beneficiary countries under this Act, or a beneficiary country under the Caribbean Basin Economic Recovery Act or 2 or more such countries, plus

(ii) the direct costs of processing operations performed in a beneficiary country or countries (under this Act or the Caribbean Basin Economic Recovery Act),

is not less than 35 percent of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out subsection (a) including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) As used in this subsection, the phrase "direct costs of processing operations" includes, but is not limited to—

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expense of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, interest, and salesmen's salaries, commissions or expenses.

(4) If the President, pursuant to section 223 of the Caribbean Basin Economic Recovery Expansion Act of 1990, considers that the implementation of revised rules of origin for products of beneficiary countries designated under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) would be appropriate, the President may include similarly revised rules of origin for products of beneficiary countries designated under this title in any suggested legislation transmitted to the Congress that contains such rules of origin for products of beneficiary countries under the Caribbean Basin Economic Recovery Act.

(b) EXCEPTIONS TO DUTY-FREE TREATMENT.—The duty-free treatment provided under this title shall not apply to—

(1) textile and apparel articles which are subject to textile agreements;

(2) footwear not designated at the time of the effective date of this Act as eligible for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

(3) tuna, prepared or preserved in any manner, in airtight containers;

(4) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;

(6) articles to which reduced rates of duty apply under subsection (c);

(7) sugars, syrups, and molasses classified in subheadings 1701.11.03, 1701.12.02, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12 of the HTS; or

(8) rum and tafia classified in subheading 2208.40.00 of the HTS.

(c) DUTY REDUCTIONS FOR CERTAIN GOODS.—(1) Subject to paragraph (2), the President shall proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves, and leather wearing apparel that—

(A) are the product of any beneficiary country; and

(B) were not designated on August 5, 1983, as eligible articles for purposes of the generalized system of preferences under title V of the Trade Act of 1974.

(2) The reduction required under paragraph (1) in the rate of duty on any article shall—

(A) result in a rate that is equal to 80 percent of the rate of duty that applies to the article on December 31, 1991, except that, subject to the limitations in paragraph (3), the reduction may not exceed 2.5 percent ad valorem; and

(B) be implemented in 5 equal annual stages with the first ⅕ of the aggregate reduction in the rate of duty being applied to entries, or withdrawals from warehouse for consumption, of the article on or after January 1, 1992.

(3) The reduction required under this subsection with respect to the rate of duty on any article is in addition to any reduction in the rate of duty on that article that may be proclaimed by the President as being required or appropriate to carry out any trade agreement entered into under the Uruguay Round of trade negotiations; except that if the reduction so proclaimed—

(A) is less than 1.5 percent ad valorem, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed 3.5 percent ad valorem, or

(B) is 1.5 percent ad valorem or greater, the aggregate of such proclaimed reduction and the reduction under this subsection may not exceed the proclaimed reduction plus 1 percent ad valorem.

(d) SUSPENSION OF DUTY-FREE TREATMENT.—(1) The President may by proclamation suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article if such action is proclaimed under chapter 1 of title II of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(2) In any report by the United States International Trade Commission to the President under section 202(f) of the Trade Act of 1974 regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of section 203 of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.

(4) No proclamation providing solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be taken under section 203 of the Trade

Act of 1974 unless the United States International Trade Commission, in addition to making an affirmative determination with respect to such article under section 202(b) of the Trade Act of 1974, determines in the course of its investigation under such section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing alike or directly competitive article results from the duty-free treatment provided by this title.

(5)(A) Any action taken under section 203 of the Trade Act of 1974 that is in effect when duty-free treatment is proclaimed under section 202 of this title shall remain in effect until modified or terminated.

(B) If any article is subject to any such action at the time duty-free treatment is proclaimed under section 202 of this title, the President may reduce or terminate the application of such action to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of section 204 of the Trade Act of 1974.

(e) EMERGENCY RELIEF WITH RESPECT TO PERISHABLE PRODUCTS.—(1) If a petition is filed with the United States International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within 14 days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the duty-free treatment provided by this title or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the taking of action under section 203 of the Trade Act of 1974,

(B) on the day a determination by the President not to take action under section 203(b)(2) of such Act becomes final,

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day of the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(5) For purposes of this subsection, the term "perishable product" means—

(A) live plants and fresh cut flowers provided for in chapter 6 of the HTS;

(B) fresh or chilled vegetables provided for in headings 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

(C) fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheadings 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS; or

(D) concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(f) SECTION 22 FEES.—No proclamation issued pursuant to this title shall affect fees imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933 (7 U.S.C. 624).

SEC. 205. RELATED AMENDMENTS.

(a) INCREASE IN DUTY-FREE TOURIST ALLOWANCE.—Note 4 to subchapter IV of chapter 98 of the HTS is amended by inserting before the period the following: "or a country designated as a beneficiary country under the Andean Trade Preference Act".

(b) TREATMENT OF INSULAR POSSESSIONS PRODUCTS.—General Note 3(a)(iv) of the HTS (relating to products of the insular possessions) is amended by adding at the end thereof the following:

"(E) Subject to the provisions in section 204 of the Andean Trade Preference Act, goods which are imported from insular possessions of the United States shall receive duty treatment no less favorable than the treatment afforded such goods when they are imported from a beneficiary country under such Act.".

SEC. 206. INTERNATIONAL TRADE COMMISSION REPORTS ON IMPACT OF THE ANDEAN TRADE PREFERENCE ACT.

(a) IN GENERAL.—The United States International Trade Commission (hereinafter in this section referred to as the "Commission") shall prepare, and submit to the Congress, a report regarding the economic impact of this title on United States industries and consumers, and, in conjunction with other agencies, the effectiveness of this title in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries, during—

(1) the 24-month period beginning with the date of enactment of this title; and

(2) each calendar year occurring thereafter until duty-free treatment under this title is terminated under section 208(b).

For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.

(b) REPORT REQUIREMENTS.—(1) Each report required under subsection (a) shall include, but not be limited to, an assessment by the Commission regarding—

(A) the actual effect, during the period covered by the report, of this title on the United States economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries;

(B) the probable future effect that this title will have on the United States economy generally, as well as on such domestic industries, before the provisions of this title terminate; and

(C) the estimated effect that this title has had on the drug-related crop eradication and crop substitution efforts of the beneficiary countries.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of United States products affected by this title, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this title.

(c) SUBMISSION DATES; PUBLIC COMMENT.—(1) Each report required under subsection (a) shall be submitted to the Congress before the close of the 9-month period beginning on the day after the last day of the period covered by the report.

(2) The Commission shall provide an opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

SEC. 207. IMPACT STUDY BY SECRETARY OF LABOR.

The Secretary of Labor, in consultation with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact that the implementation of the provisions of this title has with respect to United States labor; and shall make an annual written report to Congress on the results of such review and analysis.

SEC. 208. EFFECTIVE DATE AND TERMINATION OF DUTY-FREE TREATMENT.

(a) EFFECTIVE DATE.—This title shall take effect on the date of enactment.

(b) TERMINATION OF DUTY-FREE TREATMENT.—No duty-free treatment extended to beneficiary countries under this title shall remain in effect 10 years after the date of the enactment of this title.

TITLE III—CONTROL AND ELIMINATION OF CHEMICAL AND BIOLOGICAL WEAPONS

SEC. 301. SHORT TITLE.

This title may be cited as the "Chemical and Biological Weapons Control and Warfare Elimination Act of 1991".

SEC. 302. PURPOSES.

The purposes of this title are—

(1) to mandate United States sanctions, and to encourage international sanctions, against countries that use chemical or biological weapons in violation of international law or use lethal chemical or biological weapons against their own nationals, and to impose sanctions against companies that aid in the proliferation of chemical and biological weapons;

(2) to support multilaterally coordinated efforts to control the proliferation of chemical and biological weapons;

(3) to urge continued close cooperation with the Australia Group and cooperation with other supplier nations to devise ever more effective controls on the transfer of materials, equipment, and technology applicable to chemical or biological weapons production; and

(4) to require Presidential reports on efforts that threaten United States interests or regional stability by Iran, Iraq, Syria, Libya, and others to acquire the materials and technology to develop, produce, stockpile, deliver, transfer, or use chemical or biological weapons.

SEC. 303. MULTILATERAL EFFORTS.

(a) MULTILATERAL CONTROLS ON PROLIFERATION.—It is the policy of the United States to

seek multilaterally coordinated efforts with other countries to control the proliferation of chemical and biological weapons. In furtherance of this policy, the United States shall—

(1) promote agreements banning the transfer of missiles suitable for armament with chemical or biological warheads;

(2) set as a top priority the early conclusion of a comprehensive global agreement banning the use, development, production, and stockpiling of chemical weapons;

(3) seek and support effective international means of monitoring and reporting regularly on commerce in equipment, materials, and technology applicable to the attainment of a chemical or biological weapons capability; and

(4) pursue and give full support to multilateral sanctions pursuant to United Nations Security Council Resolution 620, which declared the intention of the Security Council to give immediate consideration to imposing "appropriate and effective" sanctions against any country which uses chemical weapons in violation of international law.

(b) MULTILATERAL CONTROLS ON CHEMICAL AGENTS, PRECURSORS, AND EQUIPMENT.—It is also the policy of the United States to strengthen efforts to control chemical agents, precursors, and equipment by taking all appropriate multilateral diplomatic measures—

(1) to continue to seek a verifiable global ban on chemical weapons at the 40 nation Conference on Disarmament in Geneva;

(2) to support the Australia Group's objective to support the norms and restraints against the spread and the use of chemical warfare, to advance the negotiation of a comprehensive ban on chemical warfare by taking appropriate measures, and to protect the Australia Group's domestic industries against inadvertent association with supply of feedstock chemical equipment that could be misused to produce chemical weapons;

(3) to implement paragraph (2) by proposing steps complementary to, and not mutually exclusive of, existing multilateral efforts seeking a verifiable ban on chemical weapons, such as the establishment of—

(A) a harmonized list of export control rules and regulations to prevent relative commercial advantage and disadvantages accruing to Australia Group members,

(B) liaison officers to the Australia Group's coordinating entity from within the diplomatic missions,

(C) a close working relationship between the Australia Group and industry,

(D) a public unclassified warning list of controlled chemical agents, precursors, and equipment,

(E) information-exchange channels of suspected proliferants,

(F) a "denial" list of firms and individuals who violate the Australia Group's export control provisions, and

(G) broader cooperation between the Australia Group and other countries whose political commitment to stem the proliferation of chemical weapons is similar to that of the Australia Group; and

(4) to adopt the imposition of stricter controls on the export of chemical agents, precursors, and equipment and to adopt tougher multilateral sanctions against firms and individuals who violate these controls or against countries that use chemical weapons.

SEC. 304. UNITED STATES EXPORT CONTROLS.

(a) IN GENERAL.—The President shall—

(1) use the authorities of the Arms Export Control Act to control the export of those defense articles and defense services, and

(2) use the authorities of the Export Administration Act of 1979 to control the export of those goods and technology,

that the President determines would assist the government of any foreign country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons.

(b) EXPORT ADMINISTRATION ACT.—Section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405) is amended—

(1) by redesignating subsections (m) through (r) as subsections (n) through (s), respectively; and

(2) by inserting after subsection (l) the following:

"(m) CHEMICAL AND BIOLOGICAL WEAPONS.—

"(1) ESTABLISHMENT OF LIST.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons, the licensing of which would be effective in barring acquisition or enhancement of such capability.

"(2) REQUIREMENT FOR VALIDATED LICENSES.—The Secretary shall require a validated license for any export of goods or technology on the list established under paragraph (1) to any country of concern.

"(3) COUNTRIES OF CONCERN.—For purposes of paragraph (2), the term 'country of concern' means any country other than—

"(A) a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of goods or technology on the list established under paragraph (1); and

"(B) such other countries as the Secretary of State, in consultation with the Secretary and the Secretary of Defense, shall designate consistent with the purposes of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.".

SEC. 305. SANCTIONS AGAINST CERTAIN FOREIGN PERSONS.

(a) AMENDMENT TO EXPORT ADMINISTRATION ACT.—The Export Administration Act of 1979 is amended by inserting after section 11B the following:

"CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS

"SEC. 11C. (a) IMPOSITION OF SANCTIONS.—

"(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of the enactment of this section, has knowingly and materially contributed—

"(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this Act, or

"(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this Act,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

"(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

"(A) any foreign country that the President determines has, at any time after January 1, 1980—

"(i) used chemical or biological weapons in violation of international law;

"(ii) used lethal chemical or biological weapons against its own nationals; or

"(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

"(B) any foreign country whose government is determined for purposes of section 6(j) of this Act to be a government that has repeatedly provided support for acts of international terrorism; or

"(C) any other foreign country, project, or entity designated by the President for purposes of this section.

"(3) PERSONS AGAINST WHICH SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

"(A) the foreign person with respect to which the President makes the determination described in that paragraph;

"(B) any successor entity to that foreign person;

"(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

"(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

"(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

"(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

"(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

"(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

"(c) SANCTIONS.—

"(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

"(A) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

"(B) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

"(2) EXCEPTIONS.—The President shall not be required to apply or maintain sanctions under this section—

"(A) in the case of procurement of defense articles or defense services—

"(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

"(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

"(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

"(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

"(C) to—

"(i) spare parts,

"(ii) component parts, but not finished products, essential to United States products or production, or

"(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

"(D) to information and technology essential to United States products or production; or

"(E) to medical or other humanitarian items.

"(d) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

"(e) WAIVER.—

"(1) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

"(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

"(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term 'foreign person' means—

"(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

"(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.".

(b) AMENDMENT TO ARMS EXPORT CONTROL ACT.—The Arms Export Control Act is amended by inserting after chapter 7 the following:

"CHAPTER 8—CHEMICAL OR BIOLOGICAL WEAPONS PROLIFERATION

"SEC. 81. SANCTIONS AGAINST CERTAIN FOREIGN PERSONS.

"(a) IMPOSITION OF SANCTIONS.—

"(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of the enactment of this section, has knowingly and materially contributed—

"(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States,

"(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States, or

"(C) through any other transaction not subject to sanctions pursuant to the Export Administration Act of 1979,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

"(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

"(A) any foreign country that the President determines has, at any time after January 1, 1980—

"(i) used chemical or biological weapons in violation of international law;

"(ii) used lethal chemical or biological weapons against its own nationals; or

"(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

"(B) any foreign country whose government is determined for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405(j)) to be a government that has repeatedly provided support for acts of international terrorism; or

"(C) any other foreign country, project, or entity designated by the President for purposes of this section.

"(3) PERSONS AGAINST WHOM SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

"(A) the foreign person with respect to which the President makes the determination described in that paragraph;

"(B) any successor entity to that foreign person;

"(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

"(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

"(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

"(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

"(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

"(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

"(c) SANCTIONS.—

"(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

"(A) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

"(B) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

"(2) EXCEPTIONS.—The President shall not be required to apply or maintain sanctions under this section—

"(A) in the case of procurement of defense articles or defense services—

"(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

"(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

"(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

"(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

"(C) to—

"(i) spare parts,

"(ii) component parts, but not finished products, essential to United States products or production, or

"(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

"(D) to information and technology essential to United States products or production; or

"(E) to medical or other humanitarian items.

"(d) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this section shall apply for a period of at least 12 months

following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

"(e) WAIVER.—

"(1) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

"(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

"(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term 'foreign person' means—

"(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

"(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.".

SEC. 306. DETERMINATIONS REGARDING USE OF CHEMICAL OR BIOLOGICAL WEAPONS.

(a) DETERMINATION BY THE PRESIDENT.—

(1) WHEN DETERMINATION REQUIRED; NATURE OF DETERMINATION.—Whenever persuasive information becomes available to the executive branch indicating the substantial possibility that, on or after the date of the enactment of this title, the government of a foreign country has made substantial preparation to use or has used chemical or biological weapons, the President shall, within 60 days after the receipt of such information by the executive branch, determine whether that government, on or after such date of enactment, has used chemical or biological weapons in violation of international law or has used lethal chemical or biological weapons against its own nationals. Section 307 applies if the President determines that that government has so used chemical or biological weapons.

(2) MATTERS TO BE CONSIDERED.—In making the determination under paragraph (1), the President shall consider the following:

(A) All physical and circumstantial evidence available bearing on the possible use of such weapons.

(B) All information provided by alleged victims, witnesses, and independent observers.

(C) The extent of the availability of the weapons in question to the purported user.

(D) All official and unofficial statements bearing on the possible use of such weapons.

(E) Whether, and to what extent, the government in question is willing to honor a request from the Secretary General of the United Nations to grant timely access to a United Nations fact-finding team to investigate the possibility of chemical or biological weapons use or to grant such access to other legitimate outside parties.

(3) DETERMINATION TO BE REPORTED TO CONGRESS.—Upon making a determination under paragraph (1), the President shall promptly report that determination to the Congress. If the determination is that a foreign government had used chemical or biological weapons as described in that paragraph, the report shall specify the sanctions to be imposed pursuant to section 307.

(b) CONGRESSIONAL REQUESTS; REPORT.—

(1) REQUEST.—The Chairman of the Committee on Foreign Relations of the Senate (upon consultation with the ranking minority member of such committee) or the Chairman of the Committee on Foreign Affairs of the House of Representatives (upon consultation with the ranking minority member of such committee) may at any time request the President to consider whether a particular foreign government, on or after the date of the enactment of this title, has used chemical or biological weapons in violation of international law or has used lethal chemical or biological weapons against its own nationals.

(2) REPORT TO CONGRESS.—Not later than 60 days after receiving such a request, the President shall provide to the Chairman of the Committee on Foreign Relations of the Senate and the Chairman of the Committee on Foreign Affairs of the House of Representatives a written report on the information held by the executive branch which is pertinent to the issue of whether the specified government, on or after the date of the enactment of this title, has used chemical or biological weapons in violation of international law or has used lethal chemical or biological weapons against its own nationals. This report shall contain an analysis of each of the items enumerated in subsection (a)(2).

SEC. 307. SANCTIONS AGAINST USE OF CHEMICAL OR BIOLOGICAL WEAPONS.

(a) INITIAL SANCTIONS.—If, at any time, the President makes a determination pursuant to section 306(a)(1) with respect to the government of a foreign country, the President shall forthwith impose the following sanctions:

(1) FOREIGN ASSISTANCE.—The United States Government shall terminate assistance to that country under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance and food or other agricultural commodities or products.

(2) ARMS SALES.—The United States Government shall terminate—

(A) sales to that country under the Arms Export Control Act of any defense articles, defense services, or design and construction services, and

(B) licenses for the export to that country of any item on the United States Munitions List.

(3) ARMS SALES FINANCING.—The United States Government shall terminate all foreign military financing for that country under the Arms Export Control Act.

(4) DENIAL OF UNITED STATES GOVERNMENT CREDIT OR OTHER FINANCIAL ASSISTANCE.—The United States Government shall deny to that country any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, including the Export-Import Bank of the United States.

(5) EXPORTS OF NATIONAL SECURITY-SENSITIVE GOODS AND TECHNOLOGY.—The authorities of section 6 of the Export Administration Act of 1979 (50 U.S.C. 2405) shall be used to prohibit the export to that country of any goods or technology on that part of the control list established under section 5(c)(1) of that Act (22 U.S.C. 2404(c)(1)).

(b) ADDITIONAL SANCTIONS IF CERTAIN CONDITIONS NOT MET.—

(1) PRESIDENTIAL DETERMINATION.—Unless, within 3 months after making a determination pursuant to section 306(a)(1) with respect to a foreign government, the President determines and certifies in writing to the Congress that—

(A) that government is no longer using chemical or biological weapons in violation of international law or using lethal chemical or biological weapons against its own nationals,

(B) that government has provided reliable assurances that it will not in the future engage in any such activities, and

(C) that government is willing to allow on-site inspections by United Nations observers or other internationally recognized, impartial observers, or other reliable means exist, to ensure that that government is not using chemical or biological weapons in violation of international law and is not using lethal chemical or biological weapons against its own nationals,

then the President, after consultation with the Congress, shall impose on that country the sanctions set forth in at least 3 of subparagraphs (A) through (F) of paragraph (2).

(2) SANCTIONS.—The sanctions referred to in paragraph (1) are the following:

(A) MULTILATERAL DEVELOPMENT BANK ASSISTANCE.—The United States Government shall oppose, in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d), the extension of any loan or financial or technical assistance to that country by international financial institutions.

(B) BANK LOANS.—The United States Government shall prohibit any United States bank from making any loan or providing any credit to the government of that country, except for loans or credits for the purpose of purchasing food or other agricultural commodities or products.

(C) FURTHER EXPORT RESTRICTIONS.—The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit exports to that country of all other goods and technology (excluding food and other agricultural commodities and products).

(D) IMPORT RESTRICTIONS.—Restrictions shall be imposed on the importation into the United States of articles (which may include petroleum or any petroleum product) that are the growth, product, or manufacture of that country.

(E) DIPLOMATIC RELATIONS.—The President shall use his constitutional authorities to downgrade or suspend diplomatic relations between the United States and the government of that country.

(F) PRESIDENTIAL ACTION REGARDING AVIATION.—(i)(I) The President is authorized to notify the government of a country with respect to which the President has made a determination pursuant to section 306(a)(1) of his intention to suspend the authority of foreign air carriers owned or controlled by the government of that country to engage in foreign air transportation to or from the United States.

(II) Within 10 days after the date of notification of a government under subclause (I), the Secretary of Transportation shall take all steps necessary to suspend at the earliest possible date the authority of any foreign air carrier owned or controlled, directly or indirectly, by that government to engage in foreign air transportation to or from the United States, notwithstanding any agreement relating to air services.

(ii)(I) The President may direct the Secretary of State to terminate any air service agreement between the United States and a country with respect to which the President has made a determination pursuant to section 306(a)(1), in accordance with the provisions of that agreement.

(II) Upon termination of an agreement under this clause, the Secretary of Transportation shall take such steps as may be necessary to revoke at the earliest possible date the right of any foreign air carrier owned, or controlled, directly or indirectly, by the government of that country to engage in foreign air transportation to or from the United States.

(iii) The Secretary of Transportation may provide for such exceptions from clauses (i) and (ii) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(iv) For purposes of this subparagraph, the terms "air transportation", "air carrier", "foreign air carrier", and "foreign air transportation" have the meanings such terms have under section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301).

(c) REMOVAL OF SANCTIONS.—The President shall remove the sanctions imposed with respect to a country pursuant to this section if the President determines and so certifies to the Congress, after the end of the 12-month period beginning on the date on which sanctions were initially imposed on that country pursuant to subsection (a), that—

(1) the government of that country has provided reliable assurances that it will not use chemical or biological weapons in violation of international law and will not use lethal chemical or biological weapons against its own nationals;

(2) that government is not making preparations to use chemical or biological weapons in violation of international law or to use lethal chemical or biological weapons against its own nationals;

(3) that government is willing to allow on-site inspections by United Nations observers or other internationally recognized, impartial observers to verify that it is not making preparations to use chemical or biological weapons in violation of international law or to use lethal chemical or biological weapons against its own nationals, or other reliable means exist to verify that it is not making such preparations; and

(4) that government is making restitution to those affected by any use of chemical or biological weapons in violation of international law or by any use of lethal chemical or biological weapons against its own nationals.

(d) WAIVER.—

(1) CRITERIA FOR WAIVER.—The President may waive the application of any sanction imposed with respect to a country pursuant to this section—

(A) if—

(i) in the case of any sanction other than a sanction specified in subsection (b)(2)(D) (relating to import restrictions) or (b)(2)(E) (relating to the downgrading or suspension of diplomatic relations), the President determines and certifies to the Congress that such waiver is essential to the national security interests of the United States, and if the President notifies the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of his determination and certification at least 15 days before the waiver takes effect, in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961, or

(ii) in the case of any sanction specified in subsection (b)(2)(D) (relating to import restrictions), the President determines and certifies to the Congress that such waiver is essential to the national security interest of the United States, and if the President notifies the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of his determination and certification at least 15 days before the waiver takes effect; or

(B) if the President determines and certifies to the Congress that there has been a fundamental change in the leadership and policies of the government of that country, and if the President notifies the Congress at least 20 days before the waiver takes effect.

(2) REPORT.—In the event that the President decides to exercise the waiver authority provided in paragraph (1) with respect to a country, the President's notification to the Congress under such paragraph shall include a report fully articulating the rationale and circumstances which led the President to exercise that waiver authority, including a description of the steps which the government of that country has taken to satisfy the conditions set forth in paragraphs (1) through (4) of subsection (c).

(e) CONTRACT SANCTITY.—

(1) SANCTIONS NOT APPLIED TO EXISTING CONTRACTS.—(A) A sanction described in paragraph (4) or (5) of subsection (a) or in any of subparagraphs (A) through (D) of subsection (b)(2) shall not apply to any activity pursuant to any contract or international agreement entered into before the date of the presidential determination under section 306(a)(1) unless the President determines, on a case-by-case basis, that to apply such sanction to that activity would prevent the performance of a contract or agreement that would have the effect of assisting a country in using chemical or biological weapons in violation of international law or in using lethal chemical or biological weapons against its own nationals.

(B) The same restrictions of subsection (p) of section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405), as that subsection is so redesignated by section 304(b) of this title, which are applicable to exports prohibited under section 6 of that Act shall apply to exports prohibited under subsection (a)(5) or (b)(2)(C) of this section. For purposes of this subparagraph, any contract or agreement the performance of which (as determined by the President) would have the effect of assisting a foreign government in using chemical or biological weapons in violation of international law or in using lethal chemical or biological weapons against its own nationals shall be treated as constituting a breach of the peace that poses a serious and direct threat to the strategic interest of the United States, within the meaning of subparagraph (A) of section 6(p) of that Act.

(2) SANCTIONS APPLIED TO EXISTING CONTRACTS.—The sanctions described in paragraphs (1), (2), and (3) of subsection (a) shall apply to contracts, agreements, and licenses without regard to the date the contract or agreement was entered into or the license was issued (as the case may be), except that such sanctions shall not apply to any contract or agreement entered into or license issued before the date of the presidential determination under section 306(a)(1) if the President determines that the application of such sanction would be detrimental to the national security interests of the United States.

SEC. 308. PRESIDENTIAL REPORTING REQUIREMENTS.

(a) REPORTS TO CONGRESS.—Not later than 90 days after the date of the enactment of this title, and every 12 months thereafter, the President shall transmit to the Congress a report which shall include—

(1) a description of the actions taken to carry out this title, including the amendments made by this title;

(2) a description of the current efforts of foreign countries and subnational groups to acquire equipment, materials, or technology to develop, produce, or use chemical or biological weapons, together with an assessment of the current and likely future capabilities of such countries and groups to develop, produce, stockpile, deliver, transfer, or use such weapons;

(3) a description of—

(A) the use of chemical weapons by foreign countries in violation of international law,

(B) the use of chemical weapons by subnational groups,

(C) substantial preparations by foreign countries and subnational groups to do so, and

(D) the development, production, stockpiling, or use of biological weapons by foreign countries and subnational groups; and

(4) a description of the extent to which foreign persons or governments have knowingly and materially assisted third countries or subnational groups to acquire equipment, material, or technology intended to develop, produce, or use chemical or biological weapons.

(b) PROTECTION OF CLASSIFIED INFORMATION.—To the extent practicable, reports submitted under subsection (a) or any other provision of this title should be based on unclassified information. Portions of such reports may be classified.

Mr. DODD. Mr. President, I move that the Senate disagree to the House amendment, request a conference with the House on 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. BENTSEN, Mr. MOYNIHAN, and Mr. PACKWOOD.

SENIOR EXECUTIVE SERVICE IMPROVEMENTS ACT

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2270, the Senior Executive Service Improvements Act, just received from the House; that the bill be deemed read three times and passed; and that the motion to reconsider be laid upon the table.

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

The bill (H.R. 2270) was deemed read the third time and passed.

BILL PRINTED AS PASSED—H.R. 2194

Mr. DODD. Mr. President, I ask unanimous consent that H.R. 2194, the Federal facilities bill, be printed as passed by the Senate.

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

BILL PLACED ON CALENDAR—H.R. 3508

Mr. DODD. Mr. President, I ask unanimous consent that H.R. 3508 relating to health professionals, just received from the House, be placed on the calendar.

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

INTELLIGENCE AUTHORIZATION ACT, FISCAL YEAR 1992—CONFERENCE REPORT

Mr. DODD. Mr. President, I submit a report of the committee of conference on H.R. 2038 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2038) to authorize appropriations for fiscal year 1992 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for after purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of November 18, 1991.)

Mr. BOREN. Mr. President, as my colleagues know, the annual intelligence authorization bill authorizes appropriations for all intelligence activities of the U.S. Government. These include not only the authorization for CIA, but also the authorization for Department of Defense intelligence components, the Bureau of Intelligence and Research of the Department of State, the Intelligence Division of the FBI, and various intelligence components in other Departments and agencies.

In addition to allocating resources, this bill also serves as the vehicle for legislative improvements of a policy nature. In this respect, this year's bill is especially significant.

Mr. President, it gives me great pleasure to note that the conference committee has reported out a bill which authorizes the creation of a national security education trust fund, funded at a level of $150 million, the interest from which will be used on a continuing basis to fund undergraduate scholarships for American students to study abroad for at least a semester and grants to institutions of higher learning, in the areas of international studies, area studies, and foreign languages and graduate fellowships in these same fields.

The National Security Education Act is the largest new higher education initiative of this kind since the adoption of the National Defense Education Act in 1958. It will provide $35 million next year for the three functions I just mentioned. It will more than triple the present Federal funding for American undergraduate study abroad, increase by 40 percent funds for graduate fellowships, area studies, and foreign languages and will be the first program solely devoted to providing curriculum grants to colleges and universities for these areas of study.

To my mind, this is a long-term investment in our future, an investment to improve our understanding of the rest of the world and foster cooperation with it for generations to come. This is important not simply to prepare knowledgeable people for Government service—although that is a clear objective of this bill—but rather to make us a stronger country, one with greater appreciation and tolerance for other governments and societies, one better able to cope with the economic and political challenges which lie ahead, whether as Government servants or as participants in the private sector.

To achieve this, the bill provides funds not only to improve the quality of U.S. educational services, but also to provide the opportunity for thousands of U.S. students, who would not otherwise have it, to study abroad, to learn what other societies and cultures are like, to learn foreign languages, to establish personal ties that might later manifest themselves in a thousand different ways.

The world is a different place today. Not only are old political structures crumbling, and new ones taking their place, communications are drawing the world more closely together. There is a greater awareness of developments around the world than ever before. Economically, we find ourselves competing with the rest of the world both at home and abroad to maintain our level of prosperity.

Yet, paradoxically, it is also a time of drawing inward, of reducing our military presence around the world, of cutting costs, of reducing spending, of looking toward domestic problems. Far too few of our educational institutions promote international studies or even the study of foreign languages, far too few of our students study abroad and even those who do, typically study in European countries with a Western orientation.

It is my hope that this legislation ultimately will provide at least part of the wherewithal that this country needs to create the international outlook we must have if we are to keep this country at peace and prosperous. It is no panacea, to be sure, but it is a positive step, which I think will ultimately contribute far more to our Nation's security than a new bomber or a new battleship.

I want to thank my colleagues on the conference committee, both the House and Senate, for supporting this proposal. I am confident they will never regret it. This is something that I think we will look back upon as one of the really good things that Congress had the foresight and wisdom to press for, at a time in our history which could not be more apropos.

I also want to mention two other provisions in this conference bill, Mr. President, which I think are worthy of particular note.

The first is the sense-of-the-Congress provision that the intelligence budget total should be publicly disclosed. The Senate had passed a provision in its bill which would have mandated the disclosure of the intelligence budget totals. In the face of a firm threat from the White House that the President would veto the bill if this provision were included in the bill, the conferees decided to opt instead for a sense-of-the-Congress provision that would not be legally binding upon the President. This provides that it is the sense of Congress that in 1993, the intelligence budget totals should be disclosed publicly in an appropriate manner.

We purposely put the date at "1993" to give the intelligence committees an opportunity to work with the President and the new Director of Central Intelligence, Mr. Gates, to ascertain how this disclosure might best be accomplished without endangering the national security.

At his confirmation hearings, Mr. Gates, in fact, endorsed such disclosure in concept, though he warned of the risks of holding to the bottom-line figure once disclosed. But, he viewed such disclosure as a symbol of a new openness, marking both a change in the world and a change in the intelligence community. The committee viewed it this way as well, and is optimistic that the President and his staff will themselves come to see this action as a way of breaking with the past, of keeping faith with the future. We intend to pursue this matter, Mr. President, in the months ahead.

Finally, Mr. President, I want to comment on the resolution of the CIA consolidation of facilities issue. This bill provides, among other things, that CIA must comply with certain procedures and make certain certifications before it may proceed with the consolidation of its facilities. In my view, these conditions and limitations are wise and appropriate. Both Intelligence Committees have for some time supported the need for CIA to consolidate its facilities in the Greater Washington area. In the long run, it will save the U.S. Government a considerable amount of money, as well as providing better security and communications for CIA. But it must be done in a careful, objective way, assessing all the alternatives, and assessing the costs both in monetary terms and in terms of the effects on employees. I think the con-

ference report we have before us achieves this goal, and puts this project on the right path. I am indebted to those in both houses who have worked diligently to achieve this result.

With that, let me urge my colleagues to support the adoption of this conference report. It is a sensible and fair bill, which represents a great deal of work on the part of the two Intelligence Committees.

Mr. GLENN. Mr. President, while on balance I support this conference agreement on the fiscal year 1992 intelligence authorization bill, there are several aspects of this legislation which I find troubling.

Of greatest concern to me are the reductions in the intelligence budget contained in this legislation. I remain unconvinced of the rationale for these reductions. Our concerns with the intelligence community's priorities should not be addressed by deep budget cuts, but rather by restructuring existing resources. I am convinced that during this time of unprecedented change and uncertainty in the international system, the need for a strong and reliable intelligence capability is particularly compelling.

The positive changes taking place in the Soviet Union today are offset by the destabilizing effects of extensive economic, political, ethnic, and religious turmoil. While history has recorded the decline of empires before, never has the world witnessed the disintegration of an empire that was armed to the teeth with weapons of mass destruction. This fact alone means that the Soviet Union—or what remains of it—must remain a high priority for United States intelligence.

In addition, there are a host of other national security threats that demand a greater concentration of intelligence capabilities and resources—the proliferation of weapons of mass destruction, drug smuggling, terrorism, environmental change, low-intensity conflict in the Third World, and the illicit export of high-technology items.

With the end of the cold war and the strong likelihood that our defense spending will be declining sharply over the next several years, we must be mindful of the lessons of history. Defense spending has always experienced cycles of expansion and contraction. Periods of lower tensions result in reduced defense budgets. Such times seem to eventually give way to periods of greater tension which, in turn, lead toward greater defense spending. When the day comes that the United States must rebuild our national defense to confront a threat that is now difficult to foresee, we must do it from the stongest and most reliable intelligence base possible. Indeed, accurate and timely intelligence is America's greatest force-multiplier.

I am convinced that significant reductions in our intelligence capabilities, especially during this period of international instability, are unwise and could ultimately be damaging to U.S. national security.

Mr. President, because of my concern with the diminishing intelligence budget, it is essential to be more responsible than ever before with the allocation of intelligence resources. This is why I am strongly opposed to the provision in this conference report which would establish a trust fund to support language and foreign area studies at the undergraduate and graduate level. While this is perhaps a commendable objective, such a program does not belong in the intelligence budget.

I believe that it is highly inappropriate to utilize increasingly scarce intelligence resources to fund educational programs at a time when we are terminating important intelligence systems and programs.

Implicit in this initiative is the goal of infusing the intelligence community with individuals with greater foreign language proficiency and foreign area expertise. Assuming that this is a valid requirement, surely there must be more straightforward and less expensive ways of achieving this objective, such as retraining existing intelligence personnel or more actively recruiting the many U.S. citizens who already have needed language skills and foreign area expertise.

The greatest resource in U.S. intelligence are the thousands of men and women who toil with little public recognition of and appreciation for their unique contribution to American national security. Over the course of their intelligence careers, these individuals have developed unique and invaluable skills and experience which cannot be taught at an institution of higher learning. In the next several years, many of these individuals will be discharged from their jobs in the intelligence community because of growing budgetary constraints. It is more than a little ironic that we should be spending significant resources to subsidize the recruitment of a new generation of intelligence personnel when we will be laying off more seasoned intelligence professionals.

Mr. President, I believe that this is inappropriate. I am deeply concerned that the conference's authorization of this program could mark the beginning of a disturbing trend—cannibalizing the shrinking intelligence budget to fund programs that are at best marginally relevant to the greater needs of the U.S. intelligence community.

Finally, I am deeply disappointed that the conference did not fully authorize the administration's requested level of funding for a major new program which would make a unique and highly significant contribution to our current reconnaissance capabilities. Particularly when the requirements for such a capability are so compelling, failure to see this program through to deployment would be as shortsighted and irresponsible as the termination of the SR-71, which left our Nation without a survivable strategic airborne reconnaissance platform.

While the price tag for this program is significant, I am firmly convinced that the expense is justified, especially in light of lessons learned from Operation Desert Shield and Operation Desert Storm. Surely when American lives and interests are on the line—as they recently were in the Persian Gulf—the United States cannot afford not to have the best possible intelligence capability at its disposal.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

MINORITY PARTY COMMITTEE APPOINTMENTS

Mr. GARN. Mr. President, on behalf of Senator DOLE, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 226) on certain minority party committee appointments.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

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

The resolution (S. Res. 226) was agreed to, as follows:

S. RES. 226

Resolved, That the Senator from Rhode Island (Mr. Chafee) shall continue his membership on the Committee on Banking, Housing and Urban Affairs until the convening of the Second Session of the One Hundred Second Congress.

Mr. DODD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER (Mr. LAUTENBERG). Without objection, it is so ordered.

Mr. SIMON. Mr. President, I ask unanimous consent that I may proceed for 5 minutes as in morning business.

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

TROOP REDUCTION IN EUROPE

Mr. SIMON. Mr. President, I received a press release, along with you, and Senator PELL, and the other Members of this body, which stated that the Defense Department intends to pare down our Armed Forces in Western Europe by 50 percent by the end of 1995.

I do not fault the fact that we are paring down our defense establishment over there. But if it makes sense to do it by 1995, why does it not make sense to do it by the end of this next year? And even if we keep every one of those personnel in the Armed Forces and do not reduce the numbers—and I think frankly we can reduce the numbers—but even if we were to keep the same numbers to have these personnel here and have their dependents here means that money is going to be spent in the United States rather than in other countries.

If we were rolling in money and had a huge budget surplus and no trade deficit, I would understand kind of leisurely going along until 1995 to solve this problem. I do not understand when we do it when we have the kind of budgetary problems and the kind of trade deficit problems that we have today. I think we ought to make a greater priority out of this.

Let me add there is another reason, and I say this as someone who was stationed overseas in the Army after World War II. I was stationed in Germany, and the reality is that foreign troops in another country do create some ill will. We do not like to talk about it, and I am not suggesting that Americans are any worse than people of any other country. But with foreign troops stationed in a place comes problems of excessive drinking, prostitution, the kind of problems that we all know about and we talk about privately.

I think we would create some good will elsewhere if we were to reduce the numbers that are overseas. I do not know precisely how we deal with this, and we are not going to deal with it before we adjourn sine die. But it just seems to me it makes so much sense.

The enemy, the Soviet Union, has disintegrated, for all practical purposes, in terms of a potential foe. Senator SAM NUNN is talking about spending some money of our defense dollars to help dismantle the nuclear forces over there, and I commend Senator NUNN for his suggestions. But it seems to me that if it makes sense to reduce by 50 percent our Armed Forces, and their dependents, in Western Europe by the end of 1995, why does it not make infinitely more sense to do it by the end of 1992?

I hope we use a little common sense in this area, Mr. President, and I hope that you—as a former business executive and someone whose judgment I think is respected by Members in this body on both sides—and the chairman of the Senate Foreign Relations Committee, who has a great deal of background in this area, I hope they can be among the people who will lead in this area.

Mr. President, if no one else seeks the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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 when the Senate considers the conference report on H.R. 2100, the Department of Defense authorization bill, that it be considered under the following time agreement: 2 hours equally divided between Senators NUNN and WARNER or their designees; 30 minutes for Senator LEAHY; and that when all time is used or yielded back, the Senate, without any intervening action or debate, vote on the conference report.

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

SUPPLEMENTAL APPROPRIATIONS BILL

Mr. MITCHELL. Mr. President, earlier this evening I indicated that it was my intention to proceed this evening, or as soon as possible, to the supplemental appropriations bill. At that time I had inquired of the distinguished Republican leader whether he was in a position to grant that consent. He indicated then that he was not in a position to do so at that time.

And I will now inquire of the distinguished Republican leader whether it will be possible for him to give consent to proceed to the supplemental appropriations bill at this time.

Mr. DOLE. Mr. President, if the majority leader will yield, I think the one problem of giving consent was that there was one amendment which just had the Senator's name and two question marks behind the name. We did not have any idea what the amendment was.

Until we can ascertion that, I am not in a position to give consent. I suggest to the majority leader I think we can do that by tomorrow. But just as sort of a fail-safe, I think the leader plans to proceed with a cloture motion.

Mr. MITCHELL. Accordingly, Mr. President, so that in the event we are not able to get consent tomorrow—and I hope very much that we will be able to get consent tomorrow so that we can proceed with dispatch—it is my intention now to move to proceed to the supplemental appropriations bill, and then to file a cloture motion on the motion to proceed, which would ripen on Friday morning.

But as the distinguished Republican leader and I have discussed privately, and I have just stated here in this public colloguy, we both hope that it will not be necessary to actually vote on cloture on the motion to proceed, but that we get to the supplemental appropriation bill sometime during the day tomorrow.

CLOTURE MOTION

Mr. MITCHELL. Accordingly, Mr. President, I now move to proceed to House Joint Resolution 157, and I send a cloture motion to the desk. I ask that it be stated.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs to read the motion.

The 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 the debate upon the motion to proceed to House Joint Resolution 157, making technical corrections and making appropriations for the fiscal year ending September 30, 1991, and for other purposes:

George Mitchell, Daniel K. Akaka, Joe Biden, Don Riegle, Claiborne Pell, Robert C. Byrd, Wendell Ford, Fritz Hollings, Barbara Mikulski, J.J. Exon, Harry Reid, Richard Bryan, Frank Lautenberg, Quentin Burdick, Daniel K. Inouye, and Richard Shelby.

Mr. MITCHELL. Mr. President, I now withdraw the motion to proceed to House Joint Resolution 157.

The PRESIDING OFFICER. The motion to proceed is withdrawn.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, there will be no further rollcall votes this evening. I have discussed with the distinguished Republican leader the schedule for tomorrow. We both have been briefed throughout the evening by the chairman and ranking member of the Banking Committee, as well as by the Secretary of Treasury, who was here earlier this evening consulting with the chairman and ranking member.

We are advised that substantial progress has been made in reaching agreement on a narrower version of the banking bill, which appears to open up

the prospect of completing action on the bill during the day tomorrow.

I inquire of the Chair whether I am correct that when the Senate returns to legislative session tomorrow, the banking bill will be the pending business.

The PRESIDING OFFICER. The majority leader is correct.

Mr. MITCHELL. In that event, Mr. President, Senators should be advised that we will come in at 8:30 tomorrow. There will be 1½ hours of morning business, and then at 10 o'clock in the morning, the Senate will return to legislative session, at which time the banking bill will be the pending business.

It is my understanding that at approximately 10 a.m., the manager, the chairman of the Banking Committee, will propound an agreement governing the disposition of that bill, identifying amendments thereto, hopefully with time agreements where possible, and that we can complete action on the bill during the day tomorrow.

It is my intention thereafter to proceed to the defense authorization conference report, pursuant to the agreement just obtained, which provides for a maximum of 2 hours and 30 minutes on that bill. I hope that all that time will not be used, and that we can complete action on that during the day tomorrow.

It is also my hope, as previously expressed, that we will in the interim have obtained consent to proceed to the supplemental appropriations bill, and that we can take action on that measure, as well, tomorrow.

Mr. DOLE. If the majority leader will yield, Mr. President, I think it is fair to say we are also trying to figure out how to get to conference on the crime bill. We hope to be able to resolve that. If that were done and we were able to do the other two tomorrow, that would be a big step toward adjournment.

Mr. MITCHELL. It surely would be. As the distinguished Republican leader knows, he and I met earlier this evening with the Speaker, the majority leader, and the minority leader in the House in an effort—that is one of several meetings we will have in the remaining days, as we always do—to see if we cannot reach agreement on how best to proceed in a way that will permit us to adjourn in accordance with our target of prior to Thanksgiving.

Getting action on the banking bill will be a major part of that, and as the distinguished Republican leader has just noted, the crime bill is also a major part of that. We have been consulting on that throughout the evening, as well, and we hope to have that resolved by noon tomorrow, one way or the other, in a way that will permit us to proceed with respect to that important legislation.

PROGRAM

Mr. MITCHELL. Mr. President, I now ask unanimous consent that when the Senate completes its business today, it stand in recess until 8:30 a.m. on Thursday, November 21; that following the prayer, the Journal of proceeding be deemed approved to date; and the time for the two leaders be reserved for their use later in the day; that there be a period for morning business not to extend beyond 10 a.m. with Senators permitted to speak therein, with the following Senators recognized to speak in the order listed: Senator GORE, for up to 25 minutes; Senator REID, for up to 15 minutes; Senator LIEBERMAN, for up to 5 minutes; and that Senator PRYOR control the remaining time until 10 a.m.

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

Mr. DOLE. Mr. President, I wonder if the distinguished assistant Republican leader might be able to speak for 5 minutes, and then just go out.

Mr. MITCHELL. Certainly. I believe the Chair has one announcement first, and I will include that in the closing request.

APPOINTMENT BY THE REPUBLICAN LEADER

The PRESIDING OFFICER. The Chair, on behalf of the Republican leader, announces the appointment of the following Senators to be members of the official Senate delegation to attend the 50th Anniversary Commemoration of the Attack on Pearl Harbor: The Senator from Arizona [Mr. MCCAIN], vice chairman; the Senator from Oregon [Mr. HATFIELD]; the Senator from Texas [Mr. GRAMM]; the Senator from Washington [Mr. GORTON]; and the Senator from Utah [Mr. GARN].

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senator SIMPSON be recognized to address the Senate, and that upon the completion of his remarks the Senate stand in recess as previously ordered.

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

The Senator from Wyoming is recognized.

SENATOR BYRD'S BIRTHDAY

Mr. SIMPSON. Mr. President, since the day is upon us, I want to very briefly mention that it was 74 years ago today, on November 20, 1917, an event occurred in North Wilkesboro, NC, which has proven to be highly important to this magnificent institution, the U.S. Senate, relating to the birth of the distinguished chairman of the Appropriations Committee, the President pro tempore, the senior Senator from West Virginia, a historian without peer in the institution he loves so well. That is our friend, ROBERT C. BYRD.

He has held more legislative elective offices than any other individual in the history of his beloved State. He began service in the West Virginia House of Delegates in 1946. He was elected to the West Virginia Senate in 1950. He was elected to the U.S. House in 1952. Since 1958, he has served with great distinction in the U.S. Senate.

During that period of service in Congress, he obtained a law degree. He was the 1,579th person out of 1,799 of us to serve in the Senate. He has held more leadership Senate positions than any other Senator of any party in the history of the U.S. Senate. Many other honors and distinctions have accompanied this rise of his. He is a 33rd degree Mason, and was awarded the Grand Cross of the Court of Honour by the Supreme Council of the Masonic Order. He was named West Virginian of the Year more than anyone in history.

Senator BYRD is author of "The Senate: 1789 Through 1989." Here is where his legacy will be handed down through the uncounted years in these two volumes that all of us have read and enjoyed. They include not only serious presentations of parliamentary proceedings and the business of the Senate, but some rare anecdotal material, which is truly delightful to read.

Mr. President, his achievements are many. The list is long. But, above all else, he is a Senator's Senator. No one in the history of the Senate has given the institution more. He has actually dedicated his very life to it. I dearly hope that he and his very steady and gracious wife, Erma, enjoy this—as he referred to it, and I sought this information—his 27,029th day in the life of one of the finest statesmen to have served his country in the U.S. Senate.

He had taken me under his wing when I first came here. He knew my father. He worked with him on many issues. I want to thank him for sharpening my awareness of history, literature, the master works of the bards and scribners of the ages. That has been a delightful secondary benefit of his friendship.

He is a font of knowledge and the singular most important chronicler of our beloved institution, in which he believes so deeply in so many ways and provides evidence of that data.

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. SIMPSON. 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. SIMPSON. Mr. President, I ask unanimous consent that I may proceed for 3 minutes as if in morning business.

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

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The Senator from Wyoming is recognized for 3 minutes.

Mr. SIMPSON. I thank the Chair.

(The remarks of Mr. SIMPSON pertaining to the introduction of S. 1999 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

RECESS UNTIL TOMORROW AT 8:30 A.M.

The PRESIDING OFFICER. Under the previous order the Senate stands in recess until 8:30 a.m. tomorrow.

Thereupon, the Senate, at 10 p.m., recessed until Thursday, November 21, 1991, at 8:30 a.m.

NOMINATIONS

Executive nominations received by the Senate November 20, 1991:

DEPARTMENT OF EDUCATION

G.O. GRIFFITH, JR., OF MISSISSIPPI, TO BE ASSISTANT SECRETARY FOR INTERGOVERNMENTAL AND INTERAGENCY AFFAIRS, DEPARTMENT OF EDUCATION, VICE MICHELLE EASTON.

THE JUDICIARY

CARLOS BEA, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

TIMOTHY D. LEONARD, OF OKLAHOMA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA, VICE LAYN R. PHILLIPS, RESIGNED.

ROBERT E. PAYNE, OF VIRGINIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA, VICE J. CALVITT CLARKE, JR., RETIRED.

EWING WERLEIN, JR., OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

DEPARTMENT OF TRANSPORTATION

JAMES BUCHANAN BUSEY IV, OF ILLINOIS, TO BE DEPUTY SECRETARY OF TRANSPORTATION, VICE ELAINE L. CHAO.

EXECUTIVE OFFICE OF THE PRESIDENT

ROBERT EDWARD GRADY, OF NEW JERSEY, TO BE DEPUTY DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET, VICE WILLIAM M. DIEFENDERFER, III, RESIGNED.

DEPARTMENT OF JUSTICE

HENRY EDWARD HUDSON, OF VIRGINIA, TO BE DIRECTOR OF THE U.S. MARSHALS SERVICE, VICE K. MICHAEL MOORE.

CONFIRMATIONS

Executive Nominations Confirmed by the Senate November 20, 1991:

DEPARTMENT OF JUSTICE

WILLIAM PELHAM BARR, OF VIRGINIA, TO BE ATTORNEY GENERAL.

U.S. INTERNATIONAL TRADE COMMISSION

CAROL T. CRAWFORD, OF VIRGINIA, TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION FOR THE TERM EXPIRING JUNE 16, 1999.

JANET A. NUZUM, OF VIRGINIA, TO BE A MEMBER OF THE U.S. INTERNATIONAL TRADE COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 16, 1996.

DEPARTMENT OF ENERGY

JAMES G. RANDOLPH, OF OKLAHOMA, TO BE AN ASSISTANT SECRETARY OF ENERGY (FOSSIL ENERGY).

DEPARTMENT OF STATE

WILLIAM CALDWELL HARROP, OF NEW JERSEY, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO ISRAEL.

A. PETER BURLEIGH, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS COORDINATOR FOR COUNTER-TERRORISM.

JOHN GIFFEN WEINMANN, OF LOUISIANA, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS CHIEF OF PROTOCOL FOR THE WHITE HOUSE.

JOHN KENNETH BLACKWELL, OF OHIO, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE HUMAN RIGHTS COMMISSION OF THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS.

THE FOLLOWING NAMED PERSONS TO BE REPRESENTATIVES AND ALTERNATE REPRESENTATIVES OF THE UNITED STATES OF AMERICA TO THE 46TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS:

REPRESENTATIVES:
THOMAS R. PICKERING, OF NEW JERSEY.
ALEXANDER FLETCHER WATSON, OF MASSACHUSETTS.
JOSEPH VERNER REED, JR., OF CONNECTICUT.
DAN BURTON, OF INDIANA.
MERVYN M. DYMALLY, OF CALIFORNIA.
ALTERNATE REPRESENTATIVES:
GEORGE EDWARD MOOSE, OF MARYLAND.
JONATHAN MOORE, OF MASSACHUSETTS.
SHIRIN RAZIUDDIN TAHIR-KHELI, OF PENNSYLVANIA.
OSCAR PADILLA, OF CALIFORNIA.
MARGARETTA F. ROCKEFELLER, OF NEW YORK.

RICHARD B. STONE, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO DENMARK.

PEACE CORPS NATIONAL ADVISORY COUNCIL

MICHAEL B. MCCASKEY, OF ILLINOIS, TO BE A MEMBER OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR A TERM EXPIRING OCTOBER 6, 1992.

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL:

RICHARD N. BOND, OF NEW YORK, FOR A TERM EXPIRING OCTOBER 6, 1992.

TOM G. KESSINGER, OF PENNSYLVANIA, FOR A TERM EXPIRING OCTOBER 6, 1993.

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR TERMS EXPIRING OCTOBER 6, 1993:

RUTH GARDNER COX, OF TEXAS.
ROLAND H. JOHNSON, OF PENNSYLVANIA.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

REGINALD J. BROWN, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR FOR THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

ANDREW S. NATSIOS, OF MASSACHUSETTS, TO BE AN ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

HENRIETTA HOLSMAN FORE, OF CALIFORNIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

BOARD FOR INTERNATIONAL BROADCASTING

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE BOARD FOR INTERNATIONAL BROADCASTING:

PENN KEMBLE, OF THE DISTRICT OF COLUMBIA, FOR A TERM EXPIRING APRIL 28, 1992.

DANIEL A. MICA, OF FLORIDA, FOR A TERM EXPIRING APRIL 28, 1993.

CHERYL FELDMAN HALPERN, OF NEW JERSEY, FOR A TERM EXPIRING APRIL 28, 1994.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

MARK MCCAMPBELL COLLINS, JR., OF THE DISTRICT OF COLUMBIA, TO BE U.S. ALTERNATE EXECUTIVE DIRECTOR OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT FOR A TERM OF TWO YEARS.

U.S. INFORMATION AGENCY

JOHN CONDAYAN, OF VIRGINIA, TO BE AN ASSOCIATE DIRECTOR OF THE U.S. INFORMATION AGENCY.

EXECUTIVE OFFICE OF THE PRESIDENT

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE ADVISORY BOARD FOR CUBA BROADCASTING FOR TERMS EXPIRING OCTOBER 27, 1994:

JOSE A. COSTA, JR., OF FLORIDA.

JOSEPH FRANCIS GLENNON, OF FLORIDA.

CHARLES TYROLER II, OF VIRGINIA, TO BE A MEMBER OF THE ADVISORY BOARD FOR CUBA BROADCASTING FOR A TERM EXPIRING OCTOBER 27, 1992.

U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY

PAMELA J. TURNER, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 1992.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENTS TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

IN THE FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING RICHARD M. BROWN, AND ENDING WENDY A. STICKEL. (SEE EXECUTIVE JOURNAL PROCEEDINGS OF OCTOBER 29, 1991, FOR COMPLETE LIST.)

FOREIGN SERVICE NOMINATIONS BEGINNING DAVID ALLAN ALARID, AND ENDING CAROL K. STOCKER. (SEE EXECUTIVE JOURNAL PROCEEDINGS OF OCTOBER 29, 1991, FOR COMPLETE LIST.)